

**Limited Reevaluation Report
Appendix A:
Pertinent Correspondence**



**U.S. Army Corps of Engineers
New York District**

January 2004

PERTINENT CORRESPONDENCE

(Transmitted since the publication of the Draft LRR and Draft EA and their related appendices)

1. To Col. John B. O'Dowd from Mr. Richard M. Larrabee, Port Authority of New York and New Jersey, dated January 20, 2004
2. To Mr. Stuart Piken, P.E. from Mr. Andrew Raddant, United States Department of the Interior, dated January 9, 2004
3. To Mr. Andrew Raddant, United States Department of the Interior, from Mr. Stuart Piken, P.E. dated January 23, 2004
4. To Mr. Frank Santomauro, P.E. from Ms. Kathryn D. McGuckin, New York State Department of Environmental Conservation, dated December 15, 2003
5. To Ms. Kathryn D. McGuckin, New York State Department of Environmental Conservation, from Mr. Stuart Piken, P.E. dated January 20, 2004
6. To Mr. Stuart Piken, P.E. from Ms. Suzanne U. Dietrick, New Jersey Department of Environmental Protection, dated December 5, 2003
7. To Ms. Ms. Suzanne U. Dietrick, New Jersey Department of Environmental Protection, from Mr. Stuart Piken, P.E. dated January 20, 2004
8. To Mr. Thomas J. Shea from Ms. Deborah A. Mans, New York/New Jersey Baykeeper, dated December 5, 2003
9. To Ms. Deborah A. Mans, New York/New Jersey Baykeeper, from Mr. Stuart Piken, P.E. dated January 20, 2004
10. To Mr. Stuart Piken, P.E. from Mr. Stanley W. Gorski, National Marine Fisheries Service, dated December 5, 2003
11. To Mr. Stanley W. Gorski, National Marine Fisheries Service, from Mr. Stuart Piken, P.E. dated January 20, 2004
12. To Mr. Thomas J. Shea from Mr. Terence N. Martin, P.E., United States Department of the Interior, dated December 4, 2003
13. To Mr. Terence N. Martin, P.E., United States Department of the Interior, from Col. John B. O'Dowd dated December 11, 2003
14. To Mr. Thomas J. Shea from Mr. Richard J. Gimello, New Jersey Department of Transportation Office of Maritime Resources, dated December 1, 2003
15. To Mr. Richard J. Gimello, New Jersey Department of Transportation Office of Maritime Resources, from Mr. Stuart Piken, P.E. dated January 23, 2004
16. To Mr. Clifford G. Day, United States Fish and Wildlife Service, from Mr. Stuart Piken, P.E. dated January 20, 2004



REPLY TO
ATTENTION OF

Harbor Programs Branch

DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

January 23, 2004

Andrew L. Raddant
United States Department of the Interior
Office of the Secretary
Office of Environmental Policy and Compliance
408 Atlantic Avenue – Room 142
Boston, MA 02210-3334


Dear Mr. Raddant,

This correspondence is in response to the Department of the Interior's (DOI) letter dated January 9, 2004, received January 13, 2004 by the U.S. Army Corps of Engineers – New York District (USACE – NYD) on the *Draft Limited Reevaluation Report and Environmental Assessment on Consolidated Implementation of the New York and New Jersey Harbor Deepening Project*. Please note that (DOI) comments were received one month after the official comment period had closed (5 December 2004).

It is noted that many of the comments from the January 9, 2004 letter repeat those made in the past in connection with the Harbor Navigation Study and other deepening projects. Many of the comments are not specifically relevant to the limited scope and subject of consolidated implementation, as described in the LRR and EA. Nevertheless, we have reviewed your comments and responded to them in the attachment.

We hope that our response reassures you of the Corps' commitment to avoiding, minimizing and mitigating impacts from each of the channel improvement projects, as identified in the previous reports. If you have any further questions please direct them to my Project Manager, Mr. Thomas J. Shea, III, who can be reached at (212) 264-5570 or email: thomas.shea@usace.army.mil.

Sincerely,


Stuart Piken, P.E.
for Deputy District Engineer
for Program and Project Management

Peregrine Falcon

Comment: "The terms, conditions, and recommendations made by the FWS should be followed for the life of the two deepening projects, whether or not consolidation occurs. The terms and conditions from the Biological Opinion include no channel construction/maintenance activities within 0.25 miles of an active peregrine falcon nest during the critical nesting period of March 1 to July 31."

The LRR and EA describe benefits/impacts from constructing certain segments of deepening projects together (i.e., consolidated implementation of the Predecessor Projects and the Recommended Plan). They do not negate the analyses and conclusions previously described nor the controls and limitations placed on each. As stated before, the Corps will observe this restriction of spatial and temporal construction windows for the life of the Harbor Deepening Project (HDP), provided the birds are actually nesting in these areas during each specific year of construction.

Other Species

Comment: "The islands of the Harbor have an extensive historic and current nesting population of colonial waterbirds including species State-listed as threatened in New Jersey and New York or as species of special concern.... The Department recommends the Corps observe a 1,000-foot buffer around the islands of the Harbor from March 1 to September 1 to minimize impacts to nesting birds during the HDP."

The Corps assumes that the meaning of the term, "islands of the Harbor" refers, in the context of the HDP, only to Shooters Island. The Corps makes that assumption because no other dredging activities are anticipated within 1000 feet of Pralls, Hoffman or Swinburne Islands. The Corps has been monitoring for signs of nesting behavior for birds of concern (herons and egrets) at Shooter's Island and has observed no nesting behavior by such birds during the past several years. Therefore, the 1000-foot buffer zone should not be applicable to Shooter's Island at this time. The Corps believes that the 1000-foot buffer recommendation should be reduced to a distance less than 1000 feet (e.g., 500 feet) or eliminated altogether from the HDP recommendations until such nesting behavior is observed on the island. The Corps is continuing to monitor Shooters Island, and if nesting behavior is observed on Shooter's Island, the Corps will implement this seasonal buffer.

*Comment: "The Harbor is used by a diverse community of fishes, such as striped bass (*Morone saxatilis*), spot (*Leiostomas xanthurus*), blueback herring (*Alosa aestivalis*), bluefish (*Pomatomus saltatrix*), windowpane (*Scopthalmus aquosus*), summer flounder (*Paralichthys dentatus*) and winter flounder (*Pseudopleuronectes americanus*) ... Dredging disturbances may impact these species by removing habitat and disrupting seasonal movements, foraging and reproduction. The Department recommends continued consultation with the NNMFS to protect these species and Essential Fish Habitat..."*

Based on the data collected during the recent aquatic biological sampling programs, as described in the EA, the District has reinitiated EFH consultation with NOAA Fisheries to determine what, if any, seasonal restrictions or other actions, including habitat restoration, should be recommended in connection with deepening activities to minimize potential adverse impacts during construction of the authorized deepening projects.

HDP Modifications

Comment: "The Department understands that the individual projects now proposed as modifications to the HDP, such as removal of piers along the Kill Van Kull, Arthur Kill, or south of South Elizabeth Channel, will be presented in Public Notices for review.... To facilitate a prompt and accurate review of these projects, the Public Notices should contain information on removal methods, measures to minimize turbidity and resuspension and dispersion of potentially contaminated sediment, construction windows in Essential Fish Habitat, and disposal locations for the debris generated. If these concerns are not addressed in the respective Public Notices, the Department requests this information in a supplemental NEPA document."

The Corps disagrees with the characterization of these activities as "individual projects". USACE projects require separate congressional authorizations. Pier removal for the HDP, for example, is an individual effort not requiring congressional authorization and would be the responsibility of the facility owner(s) as well as any required mitigation. With that understanding, the Corps concurs with this comment.

Mitigation

Comment: "Appendix D of the Environmental Assessment presents a Habitat Mitigation Report, dated November 2003. A loss of approximately 6.52 acres of littoral habitat (0-6 feet in depth) is expected to result from the HDP. To mitigate for unavoidable adverse impacts, the Corps proposes to restore approximately 7.3 acres of low marsh from higher marsh dominated by Phragmites at Old Place Creek, Richmond County, New York and Woodbridge Creek, Middlesex County, New Jersey. Thus, the proposed creation or restoration of littoral habitat and intertidal wetlands at Old Place Creek and Woodbridge Creek would fulfill only the minimum requirements for 1: 1 mitigation. The Department recommends a higher mitigation ratio of 2: 1. The Department recommends the Corps consider acquiring and restoring and / or enhancing wetlands in the Hackensack Meadowlands to provide adequate mitigation ratios."

The objective of the mitigation plan is to compensate for the unavoidable impacts to ecological resources that will remain after avoidance, minimization, and reduction/ elimination techniques are fully considered and implemented to the extent possible. USACE regulation (ER) 1105-2-100 states that full credit shall be given to the beneficial aspects of an alternative plan or project before consideration is given to adding separable mitigation features. However, regardless of such beneficial aspects, the guidelines contain very distinct requirements for wetlands. Specifically, the mitigation plan must ensure that adverse impacts to wetland resources are fully mitigated, and an effort must be made to meet the Administration's goal of no net loss of wetlands.

The primary objective for this mitigation plan, therefore, is to provide replacement for the loss of littoral zone habitat as a result of implementation of the Recommended Plan. While acreage ratios are one crude measure of the scale of compensatory mitigation efforts, they don't consider ecological value gained or lost. This is why there are no mitigation acreage ratio requirements or standards defined under USACE regulations, but rather a policy of value for value. USACE is refining and confirming the projected impacts due to the project, and will consider the Department's comments regarding mitigation acreage ratios when refining its mitigation plans.

Comment: "The Department maintains that the proposed mitigation for the HDP is not adequate. Although the restorations proposed by the Corps would benefit fish and wildlife, the mitigation ratio is too low to account for all adverse impacts likely to result from the HDP. Impacts to sublittoral habitat (approximately 6-15 feet in depth) are of particular concern to the Department.... The Department has not reviewed any documents suggesting that the Corps plans to mitigate for the loss of sublittoral habitat."

As stated in the 1999 FEIS, the requirements for compensatory mitigation for disturbances to sublittoral habitat are not required in the USACE guidance document (ER 1105-2-100). The guidance also states:

c. Separable Features. Full credit shall be given to the beneficial aspects of an alternative plan, or project, before consideration is given to adding separable mitigation features. The significance of fish and wildlife resources affected by resources shall be evaluated to determine the need for separable mitigation features.

Beneficial use is a priority for the management of dredged materials for the HDP as well as every other Corps dredging activity. Given the volume of dredged material from the HDP that will be put to beneficial uses; such as the creation of artificial reefs that provide habitat, refuge and additional food sources for fish and other wildlife biota and essential fish habitat; beneficial impact clearly outweighs the adverse impact to sublittoral areas. It should also be noted that consolidated implementation would serve to reduce further the level of impacts and shorten recovery time in those dredged areas, as your letter acknowledges.

Comment: "The HDP will also increase indirect adverse impacts associated with Harbor traffic, mostly related to erosion to mudflat and low salt marsh areas from vessel wakes. Loss of low salt marsh has been occurring with existing vessel traffic at places such as Old Place Creek and additional loss of these valuable areas must be avoided. The Department recommends that the Corps develop measures to attenuate vessel wakes to avoid or minimize adverse impacts. Additional compensatory mitigation, such as salt marsh restoration, should be included in project planning if unavoidable indirect impacts remain."

Previous modeling for the 1999 *Feasibility Report* for the Harbor Navigation Study indicated no significant erosional impacts to the shoreline. A study funded by the Port Authority of New York and New Jersey (PANYNJ) (2002) on vessel wakes in the Arthur Kill further supports this conclusion. Based on measurements and observations in the 2002 report, it appears that "tugs (and similar shallow draft vessels) are more likely than deeper draft vessels to generate

the type of waves that may break and impact adjacent channel shorelines". A deeper channel would result in a decrease in the number of ship calls and related tug traffic as compared to the without-project condition. Therefore, implementation of the HDP will have the effect of decreasing the wake frequency and height generated by these vessels.

Environmental Contaminants

Comment: "The FWS has consistently expressed concern over environmental contaminants in the sediments of the Harbor. Issues raised by the FWS in previous correspondence include: (1) adequate sampling (e.g., number of samples and degree of compositing), testing methodology (e.g., test species, endpoints, duration), and interpretation (e.g., use of protective criteria, consideration of upper trophic level species); (2) best management practices to minimize contaminant dispersal during dredging and disposal; (3) adequate containment at disposal facilities; (4) appropriate selection of disposal alternatives based on contaminant concentrations; (5) remediation as a possible prerequisite for any work that would disturb contaminated sediments; (6) appropriate separation of contaminated and uncontaminated sediments during dredging; (7) examination of contaminant concentrations found in the new benthic surface exposed by dredging; and (8) assuring that parties responsible for the contaminants share responsibility for their removal... The Department recommends that the Corps perform and provide financial support for thorough ecological health monitoring in the Harbor before, during, and after the HDP. A well-designed monitoring program would help quantify both positive and negative impacts of the HDP on the Harbor environment."

The Corps adheres strictly to sediment testing requirements as mandated by the Marine Protection and Sanctuaries Act, USEPA ocean disposal testing guidelines, Corps regulations, and the requirements of the States of New York and New Jersey, as identified in their Water Quality Certification process. These testing requirements apply to all ocean and upland disposal locations and none of the above agencies have imposed any further testing or monitoring requirements. A more focused monitoring program to determine areas of the Harbor that may be outside the channels but could benefit from placement of clean material from the channels may be an appropriate task under the authorization of the Hudson-Raritan Estuary Study as a component of its Comprehensive Restoration Implementation Plan. Your input in helping to determine the extent and scope of such an effort would be greatly appreciated and would help to effectively meet the HDP goal of beneficially using such material.

Interagency Funding

Comment: "The last planning aid the FWS provided for the HDP was a Planning Aid Letter, dated August 28, 2003, for the consolidation of dredging in Contract Area 5. In the August 28 letter, the FWS noted that transfer funding from the Corps to the FWS is required for extensive review of any part of the HDP. Further FWS review of consolidation efforts or extensive modifications to the HDP will require a negotiated scope-of-work for an Interagency Agreement (IAG) and reimbursable transfer funding. The January 23, 2003 "National Agreement Between the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers for Conducting Fish

and Wildlife Coordination Act Activities" (U.S. Fish and Wildlife Service and U.S. Army Corps of Engineers, 2003) states: "A major goal of this Agreement is to ensure the FWS is invited and funded, when applicable, to participate early in and throughout the planning process to facilitate the Fish and Wildlife Coordination Act's equal consideration provision." "

The Corps has negotiated a scope of work, arranged funding, and transferred funds to FWS for the specific Planning Aid Letters that covered the individual channel deepening projects (i.e., the Predecessor Projects and the Recommended Plan). Such an effort was not warranted to evaluate the question of whether or not consolidated implementation of those already authorized projects is desirable, which is the primary question this LRR answers. Should there be additional modifications that represent substantial changes to the project, additional PALs and funding may be appropriate, but additional PALs and funding are not appropriate for minor modifications as described in this LRR. NEPA review, of course, remains an agency responsibility and one that is not covered under a funding agreement.

REFERENCED LITERATURE

Port Authority of New York and New Jersey. 2002. *Arthur Kill Ship Wave Study*.

U.S. Army Corps of Engineers – New York District. 1999. *Final Environmental Impact Statement. Feasibility Report for the New York and New Jersey Harbor Navigation Study*.

New York State Department of Environmental Conservation

Division of Environmental Permits, Region 2

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Erin M. Crotty
Commissioner

November 7, 2003

Via Fax (212-264-0961) and US MAIL

**Re: DEC No. 2-6500-00053/00001 USACE No.
New York and New Jersey Harbor Deepening Project
DEC COMMENTS OF THE DRAFT ENVIRONMENTAL ASSESSMENT**

Frank Santomauro, P.E.
Chief, Planning Division CENAN-PL
New York District, Army Corps of Engineers
Jacob K. Javits Federal Building
New York, NY 10278-0090

Dear Mr. Santomauro:

The Department has completed its review of the "Draft Environmental Assessment on Consolidated Implementation of the New York and New Jersey Harbor Deepening Project," dated October 2003, rec'd 27 October 2003, and offers the following comments:

1. 'New Information and Modified Project Conditions'

- a. **Section 5.49** Future design modifications may require permit modification and additional environmental review. The Corps must keep the Department in the loop on changes to the project.
- b. **Section 5.56** It is stated in the document that unavoidable environmental impacts associated with the Recommended Plan are disturbance and loss of littoral zone habitat. Based on recent hydrographic surveys received by the Department, intertidal marsh, shoal/mudflat, and tidal wetland adjacent area in and near Bridge Creek lie within the footprint of the dredging slope. These impacts are not addressed in the draft EA, the 1999 Feasibility Report and EIS, nor were they addressed previously by the mitigation for the 40/41 deepening project.

According to the Environmental Assessment for the AK 40/41 project, mitigation in NY for the 40/41 deepening compensates for impacts near Old Place Creek complex, south of Howland Hook: 0.08 acres of intertidal marsh

Place Creek complex, south of Howland Hook: 0.08 acres of intertidal marsh and 2.81 acres of mudflat and beach (regarded as shoal/mudflat habitat). Impacts to Bridge Creek wetlands were not identified or addressed.

Impacts to the wetlands at Bridge Creek associated with the 40/41 project and additional impacts associated with the 50-foot project must be addressed in the Environmental Assessment. Discussion on existing and proposed conditions and estimates of area impacted (square feet or acres) to intertidal vegetated marsh, shoal/mudflat, littoral zone, and tidal wetland adjacent area in the Bridge Creek complex must be included.

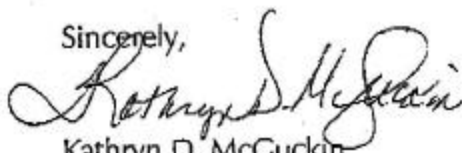
- c. 5.56 - 5.58 The proposed mitigation for the 50-foot project is creation of 2.6 acres of low marsh and tidal creek from an existing phragmites-dominated area in Old Place Creek. This proposal does not meet the 2:1 ratio required by the Department for impacts to littoral zone associated with the deepening. Mitigation requirements for impacts to wetlands in NY must be updated to reflect the current estimate of impacts associated with the project, including the additional impacts at Bridge Creek.

2. Appendix D

- a. Page 1 It is stated 'No impacts to intertidal wetlands are expected to occur as a result of the proposed navigation channel improvements'. This is false and should be deleted from the text.
- b. Page 2 It is stated that compensation is required for impacts to 1.56 acres of littoral zone in NY. This should be updated to reflect accurate estimates of impacts to all wetland types associated with the deepening.

Thank you for the opportunity to review the draft Environmental Assessment for this project. If you have any questions or if I can be of further assistance, please contact me.

Sincerely,



Kathryn D. McGuckin
Environmental Analyst II

CC: Jenine Gallo, USACE CENAN-PL-EA
Suzanne Dietrick, NJDEP
John Ferguson, NYSDEC Dredge Team Coordinator
John Cryan, NYSDEC Regional Permit Administrator
Steve Zahn / Leigh Vogel, NYSDEC Bureau of Marine Resources
File/CHRON



REPLY TO
ATTENTION OF
Planning Division

DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

January 20, 2004

Kathryn D. McGuckin
New York State Department of Environmental Conservation
Division of Environmental Permits, Region 2
47-40 21st Street
Long Island City, NY 11101

Dear Ms. McGuckin,

Thank you for the comments contained in your December 15th, 2003 letter concerning the *Draft Limited Reevaluation Report and Environmental Assessment on Consolidated Implementation of the New York and New Jersey Harbor Deepening Project*. What follows is the District's response to those comments.

Comment: (1.a.) Section 5.49 Future design modifications may require permit modification and additional environmental review. The Corps must keep the Department in the loop on changes to the project.

The District will inform the Department of any changes in project impacts and will clarify habitat type and acreage impacts as new data becomes available.

Comment: (1.b.) Section 5.56 Based on recent hydrographic surveys received by the Department, intertidal marsh, shoal/mudflat, and tidal wetland adjacent area in and near Bridge Creek lie within the footprint of the dredging slope. These impacts are not addressed in the draft EA, the 1999 Feasibility Report and EIS, nor were they addressed previously by the mitigation for the 40/41 deepening project.

The District is currently refining top of slope calculations and projected impacts associated with the 50-ft project based on additional sediment/rock information and more recent detailed hydrographic survey data in the areas of Bridge Creek in the Arthur Kill and on the southwestern section of the South Elizabeth Channel. These will help assess changes in impacts calculated from the older data.

During the Pre-Construction Engineering and Design (PED) stage, several structural and design modifications were proposed for the navigation channel improvements. These changes would apply regardless of whether implementation of the Recommended Plan is consolidated or not. Based on more recently obtained and detailed bathymetry information, intertidal and littoral zone habitat in the vicinity of Bridge Creek (which flows into the Arthur Kill) and the southwestern section of the South Elizabeth Channel may have changed, necessitating re-classification in terms of habitat type. Specifically, a portion of the project area designated as

littoral zone in the Arthur Kill may be re-classified as intertidal habitat and a portion of the project area designated as sub-littoral in South Elizabeth may be reclassified as littoral.

For the section of the project extending from Howland Hook to the Proctor & Gamble Pier, the 1999 FEIS designated 0.19 acres of littoral zone to be impacted. Preliminary estimates indicate up to 0.32 acres of littoral zone impact and 0.14 acres of intertidal habitat may now be impacted. Intertidal impacts would be to rocky intertidal areas and shoal mudflats.

Based on similarly new bathymetry data, a portion of the project area designated as sub-littoral in South Elizabeth may be reclassified as littoral habitat with an increase of up to 0.75 acres of littoral zone impacts. The 1999 FEIS previously designated approximately 0.75 acres of littoral zone as sub-littoral zone.

The District is currently refining the new bathymetric data and characterization of potential habitat impacts due to project implementation, and will modify mitigation plans to address any additional impacts. A similar evaluation of impacts and mitigation for the 41 foot predecessor project will be undertaken as a separate action.

Comment: (1.c.) Section 5.58-5.58 The proposed mitigation for the 50-foot project is creation of 2.6 acres of low marsh and tidal creek from an existing phragmites-dominated area in Old Place Creek. The proposal does not meet the 2:1 ration required by the Department for impacts to littoral zone associated with the deepening. Mitigation requirements for impacts to wetlands in NY must be updated to reflect the current estimate of impacts associated with the project, including the additional impacts at Bridge Creek.

The objective of the mitigation plan is to compensate for the unavoidable impacts to ecological resources that will remain after avoidance, minimization, and reduction/ elimination techniques are fully considered and implemented to the extent possible. As discussed previously, USACE regulation (ER) 1105-2-100 states that full credit shall be given to the beneficial aspects of an alternative plan, or project, before consideration is given to adding separable mitigation features. However, regardless of such beneficial aspects, the guidelines contain very distinct requirements for wetlands. Specifically, the mitigation plan must ensure that adverse impacts to wetland resources are fully mitigated, and an effort must be made to meet the Administration's goal of no net loss of wetlands. The primary objective for this mitigation plan, therefore, is to provide replacement for the loss of littoral zone habitat as a result of the Recommended Plan. While acreage ratios are one crude measure of the scale of compensatory mitigation efforts, they do not take into account value lost or gained. This is why there are no mitigation ratio requirements or standards defined under USACE regulations but rather a Federal policy of value for value. As described previously, USACE is refining and confirming the projected impacts due to the project, and will consider the Department's comments regarding mitigation acreage ratios when refining mitigation plans.

Comment: (2.a.) Page 1 It is stated 'No impacts to intertidal wetlands are expected to occur as a result of the proposed navigation channel improvements'. This is false and should be deleted from the text.

Concur, see response to 1b, 1c, and 2a.

Comment: (2.b.) Page 2 It is stated that compensation is required for impacts to 1.56 acres of littoral zone in NY. This should be updated to reflect accurate estimates of impacts to all wetland types associated with the deepening.

As described above, the District is currently refining top of slope calculations and projected impacts associated with the 40/41-ft and 50-ft projects based on additional sediment/rock information and hydrographic survey data in the areas of Bridge Creek ((which flows into the Arthur Kill) and the southwestern section of the South Elizabeth Channel. Based on more detailed bathymetry information, intertidal and littoral zone habitat in the vicinity of Bridge Creek in the Arthur Kill and the southwestern section of the South Elizabeth Channel are being re-classified in terms of habitat type. Specifically, a portion of the project area designated as littoral zone in the Arthur Kill may be re-classified as intertidal habitat and a portion of the project area designated as sub-littoral in South Elizabeth may be reclassified as littoral. The District is currently refining the bathymetric data and characterization of potential habitat impacts due to project implementation.

I hope that these responses assure you of the Corps' commitment to pursue all appropriate mitigation for the project and towards, whenever practicable with in the confines of federal, state, and local law and regulations , improving habitats, water and air quality for the region. If you have any further questions please direct them to my Project Manager, Mr. Thomas J. Shea, III, who can be reached at (212) 264-5570 or email: thomas.shea@usace.army.mil

Sincerely,

A handwritten signature in dark ink, appearing to read "Stuart Piken". The signature is fluid and cursive, with the first name "Stuart" being more prominent than the last name "Piken".

Stuart Piken, P.E.
Deputy District Engineer
for Programs and Project Management

Mr. Stuart Piken
Deputy District Engineer
Program and Project Management
Department of the Army
New York District, Corps of Engineers
Jacob K. Javits Federal Building
New York, NY 10278-0090

December 5, 2003

RE: DRAFT New York and New Jersey Harbor Deepening Project Limited Reevaluation Report and Environmental Assessment on Consolidated Implementation of the NY/NJ Harbor Deepening Project (November 2003)

Dear Mr. Piken:

The Office of Dredging and Sediment Technology, the Office of Program Coordination, and the Bureau of Air Quality Planning of the New Jersey Department of Environmental Protection (Department) have completed a review of the *draft* "New York and New Jersey Harbor Deepening Project Limited Reevaluation Report (DLRR) and Environmental Assessment (DEA) on Consolidated Implementation of the NY/NJ Harbor Deepening Project" dated November 2003. This review was conducted pursuant to the National Environmental Policy Act (NEPA) and in consideration of previous comments provided by the Department on the New York and New Jersey Navigation Feasibility Report completed in 1999.

The Department remains committed to working with the New York District Corps of Engineers (Corps) in the furtherance of the 50 foot deepening project while at the same time ensuring that the construction and operation will not cause a significant impact to the environment. That being said, the Department has the following comments on the documents.

Environmental Assessment

The Environmental Assessment dated November 2003 was completed by the Corps to evaluate the potential environmental impacts of the following actions:

- (1) consolidation of the KVK/NB-45 Contract Area 4b project with the 50-foot Harbor Deepening Project;
- (2) consolidation of the KVK/NB-45 Contract Area 5 project with the 50-foot Harbor Deepening Project – this has already been accomplished by the Port Authority of NY-NJ (see DLRR/EA, page 23, Section 62);

- (3) various modifications to the original 50-foot Harbor Deepening Project made during the Pre-Construction Engineering and Design (PED) phase of project development (see DEA, pages 6-8, Section 3.6); and
- (4) revisions to the 50-foot Harbor Deepening Project Habitat Mitigation Plan (see DEA, page 22, Sections 5.56-5.58).
- (5) evaluation of updated information collected by the Corps since the Feasibility Report was completed in 1999.

This review considered previous Departmental comments on the Feasibility Report for New York and New Jersey Harbor Navigation Study and its associated Final Environmental Impact Statement (FEIS; letter from Lawrence Schmidt and Lawrence J. Baier dated February 28, 2000, copy attached). The main points in this letter that do not appear to have been addressed in the DEA or DLRR are the following:

- types and numbers of construction equipment to be used as part of the proposed consolidated (both vertical and horizontal) harbor deepening project vs. that anticipated for use in the Harbor Navigation Study Feasibility Report and FEIS and the “expedited construction schedule” discussed in the February 28, 2000 letter. If construction equipment levels will be different than those evaluated in the FEIS, additional impact analyses and/or the development and use of Best Management Practices to reduce impacts to water quality and aquatic resources, may be warranted.
- identification of “final” seasonal restrictions on dredging operations – Essential Fish Habitat consultations with National Marine Fisheries Service are ongoing (see DEA, page ES-2, ES.10). Implementation of the anticipated construction schedule for the proposed consolidated dredging project, that would ultimately result in a shorter overall period of dredging activities, may be dependent on these seasonal restrictions.
- development and departmental approval of the Habitat Mitigation Plan for the proposed consolidated deepening project. Conceptual mitigation plans for the Woodbridge Creek site have been redeveloped by the USACE (See Appendix D, Section 4.3, pages 14-16). More formal comments on the Habitat Mitigation Plan are discussed in a separate section of this letter.
- development and departmental approval of the Monitoring Plan for the consolidated harbor deepening project.

Clean Air Act Compliance

DLRR - Paragraph 47 & 48 - It is our understanding from recent discussions that there is more than one non-federal sponsor for the HDP and that other sponsors/parties may be involved in the issue of use of excess emission reductions. This situation should be clarified in this discussion.

In addition, it was also our understanding that parties involved in the HDP were interested in using any excess emission reductions generated by the mitigation strategy for HDP; this narrative does not discuss such usage.

DEA, Page A-4 - The alternative recommendation currently being reviewed by the RAT will require that the requisite number of tugboats be repowered to meet the reductions needed; this may be an additional 4 tugboats or more, but the amount of reductions needed will dictate the number of tugboats repowered. This caveat needs to be added to this discussion.

In order to meet the contemporaneous requirements of General Conformity for the Kill Van Kull Contract Area 5, the PANYNJ was required to buy New Jersey shutdown credits. As stated in New Jersey Permit No. 0000-92-0031.17, these credits are to be retired at the conclusion of the project authorized by this permit. However, given a shortfall in the HAMP in 2004 and given the magnitude of the NOx emission reductions that will come from the retrofit of the Staten Island Ferry Fleet in 2007 and later years, the Department will allow full use of the Kill Van Kull Contract Area 5 shutdown credits so that the HDP can meet the contemporaneous requirements of General Conformity in 2004. However, the terms of New Jersey Permit No. 0000-92-0031.17 will be enforced at the end of 2004 and the credits will be retired.

DEA, Page A-5 - Regarding contingency strategies, the Department is very concerned with the contingency strategies that have been chosen, primarily the fact that each of the strategies has a 6 month or longer lead time. Such lead time certainly increases the 'project implementation risk'. If a measure in the preferred mitigation alternative were not be implemented on time and a contingency strategy was not implemented in sufficient time, it is very likely that the project will have to slow or temporarily halt construction. The HDP is particularly prone to this situation in the 2004-6 period. The Department highly recommends that the Corps take measures to either reduce the lead time on one or more of the contingency strategies or to implement one or more now so that 'project implementation risk' is much less of a factor, especially in the early years of the HDP.

Habitat Mitigation Plan

The mitigation plan included in the New York and New Jersey Harbor Navigation Study, Mitigation Report (January 2000) (2000 HMP) for the loss of 4.7 acres of littoral zone in New Jersey consisted of 11 acres of wetlands enhancement (*not creation as discussed in section 5.57 of the DEA*) at the Woodbridge Creek site. In addition, 2 acres of littoral zone enhancement/1 acres of littoral zone creation (*not 3 acres of littoral zone creation as discussed in the section 5.57 of the DEA*) was proposed at the Goethals Bridge South site. At various times during the review of the Feasibility Study and the 2000 HMP, the Department raised concerns as to the acceptability of the proposed mitigation plan as it related to compliance with the Intertidal and Subtidal Shallow Habitat Rule (N.J.A.C. 7:7E-3.15). See letter dated June 9, 2000 from NJDEP to Frank Santomauro of the Corps. See also letter dated November 22, 1999 from the NJDEP on the draft Feasibility Report (September 1999) reference Page 8, DEIS, page 7-9, paragraph 7.41.

The Departments' comments focused at that time on the low ratio of proposed mitigation acreage related to the loss of 4.7 acres of littoral habitat. Specifically, the 2000 HMP did not meet the 1:1 ratio of in-kind creation for the loss of 4.7 acres of littoral zone habitat as the Goethals Bridge South site was only 3 acres in size. Further, it was not clear in the 2000 HMP whether the improvements to this site would actually constitute creation/enhancement under the Rule. In addition, the mitigation plan for the Woodbridge Creek site consisted of 11 acres of wetlands *enhancement*, not creation of a wetlands from a previous upland area (see Page 49, Table 13 of the 2000 HMP). The Department requires a must higher ratio (2:1 or higher) if the proposed mitigation for loss of littoral habitat is out-of-kind. In addition, the Department raised concerns during review of the 2000 HMP (letter dated June 9, 2000) regarding the use of the "Functional Assessment" by the Corps to evaluate the baseline and post-mitigation conditions at the mitigation sites in terms of Habitat Units. The Departments' concerns are more significant now that the proposed acreage of recommended mitigation plan is so much lower.

The revised mitigation plan as presented in Appendix D of the EA now calls for only 4.7 acres of wetland enhancement at the Woodbridge Creek Site. Again, the amount of acreage is based on the "Functional Assessment" and Habitat Units of the area of impact and the proposed mitigation site. The Department evaluates mitigation plans for loss of intertidal and subtidal shallows habitat **solely** by the amount of acres loss to those created or enhanced through a hierarchy that prefers in-kind mitigation at a 1:1 ratio to out-of-kind mitigation at a ratio of 2:1 (See N.J.A.C. 7:7E-3.15(h)). The Department does not recognize the use of Habitat Units when evaluating mitigation plans as we consider other factors such a water quality functions, vegetation, etc. and not just habitat conditions. This is consistent with current practice by the Department when evaluating mitigation plans for freshwater wetlands impacts from other NY District Corps projects (flood control projects) in which freshwater wetlands impacts are anticipated.

It is for this reason that the Department is requesting that the Corp re-evaluate the conceptual mitigation plans (A or B) to determine if either of these plans could be redesigned to provide for a *minimum* of 9.4 acres (2:1 ratio for loss of 4.7 acres of littoral habitat) of wetlands enhancement at the Woodbridge Creek site. The Department is committed to working with the Corps over the next several months to expedite the development of appropriate mitigation plan for the anticipated loss of 4.7 acres of littoral zone in New Jersey from the Harbor Deepening Project.

In both the conceptual/recommended mitigation plan (Section 4.1 and 4.2), mitigation costs only include costs for HTRW investigations, but does not include costs associated with environmental cleanup or remediation. In addition, costs associated with disposal of contaminated material was only considered for New York sites. It is recommended that costs associated with HTRW investigations and disposal of contaminated material be included in the mitigation costs for the Woodbridge Creek site.

Technical comments on the DLLR and DEA are included as Attachment #1.

Thank you for providing the Department the opportunity to review the DLLR/DEA. Should you have any questions regarding the above please feel free to contact Ken Koschek, Office of Program Coordination at (609) 292-2662, Tonalee Key, Bureau of Air Quality Planning at (609) 292-6710 or myself at (609) 292-8838.

Sincerely,

Suzanne U. Dietrick, Chief
Office of Dredging and Sediment Technology
Site Remediation Program

C: Scott Douglas, NJDOT/NJMR
Ken Koschek, Office of Program Coordination
Tonalee Key, Bureau of Air Quality Planning
Virginia Kopkash, LURP

NJDEP Technical Comments on the DEA and DLRR

Limited Reevaluation Report (LRR)

- (1) DLLR, Page 9, Section 17 (Updated Surveys) - states that in connection with the preparation of the LRR that the entire project area was resurveyed. This section of the report should be revised to provide the date of said surveys for each contract area based on Table 4 of Appendix H.
- (2) DLLR, Page 12, footnote 19 number 2 - sentence is not complete.
- (3) DLLR, Page 18, Section 51 - Habitat Mitigation - comments on the habitat mitigation requirements are provided above in the section pertaining to the DEA, Appendix D, Habitat Mitigation Report.
- (4) DLLR, Page 19, Section 52 Dredged Material Management - states that the disposal locations for the material from this project is based on a project specific DMMP shown in Table 2. These sites were identified in the 1999 Dredged Material Management Plan (September 1999). This table needs to be revised to reflect the disposal/beneficial use sites identified in the draft version of the DMMP currently being updated by the Corps. As an example, the OENJ Port Reading Site is no longer a viable placement site for dredged material for this project based on correspondence from the Port Authority of NY/NJ in 2003 related to this site.
- (5) DLLR, Page 19, Section 52 Dredged Material Management- Table 2 needs to be revised to provide the date of the surveys used to calculate volume of material to be excavated as discussed earlier in the document and in Table 4 of Appendix H.

Environmental Assessment

- (6) DEA, Pages 4-5, Sections 3.3 and 3.4 - It is not clear that the dredged material volume estimates presented in the DEA for the consolidated deepening project are consistent with those presented in the DLRR (page 19, Table 2). Proposed placement sites and associated volumes for the dredged material from the consolidated deepening project should be clearly identified in the DEA.
- (7) DEA, Page 6, Section 3.6 - South Elizabeth Channel - it is stated that the decking of the Allied Signal pier and associated wood pile would be removed or replaced. The Corp should clarify in the EA as to the final disposition of this pier. The cost associated with a pier replacement should be factored into the LRR report.
- (8) DEA, Page 8, Section 4.1: the referenced new project-specific data should be summarized and discussed in the DEA; a reference to appendices (see Appendices C and

E) where this data can be found is not sufficient to provide for an evaluation of potential project impacts.

- (9) DEA, Page 14, Section 5.22: where deepening will result in the replacement of a soft-bottom channel with a hard-bottom channel, it is unlikely that benthic and epibenthic species, and the associated fish species that feed on them, will recolonize the channel. This should be considered a permanent adverse impact of the proposed project.
- (10) DEA, Page 19, Section 5.46- The section needs provide a discussion on the previous volume estimates provided in the Feasibility Study and the current volume estimation of 42.5 MCY.
- (11) DEA, Page 22 Paragraph 5.57 - This section needs to be revised to **clearly** state that the recommended mitigation plan as presented in the document entitled "New York and New Jersey Harbor Navigation Study" (January 2000) is no longer being considered by the Corp. Instead the revised mitigation plan as presented in Appendix D consists of only 4.7 acres of wetland *enhancement* at the Woodbridge Creek site for the loss of 4.7 acres of littoral zone habitat in New Jersey. As discussed previously, the revised mitigation plan as currently proposed by the Corps is unacceptable to the Department.

Volume II - Environmental Appendices

- (12) DEA, Appendix D, page 9, Section 3.1.5: states that 2 conceptual mitigation plans were developed for a larger 24.6 acre area, but only Conceptual Plan A is discussed.
- (13) DEA, Appendix D, Table 3-1: it appears that the two conceptual mitigation plans developed for the Woodbridge Creek site largely consist of the conversion of existing *Phragmites* (8.2 acres) and scrub-shrub (3.4 – 6.8 acres) wetland areas to low marsh wetlands (11.8-12.4 acres), with some additional open water areas. Although this may result in better quality wetlands along Woodbridge Creek, the net effect of implementation of the proposed deepening project will be the loss of wetlands (littoral habitat) acreage in New Jersey.

Volume III - Engineering and Other Appendices

- (14) Appendix A - Pertinent Correspondence, Item 14 - The second page of the September 19, 2002 letter is missing.
- (15) Appendix A - The Federal Consistency/Water Quality Certificate issue on June 17, 2002 by the Department (copy attached) for the Harbor Deepening Project should be included as relevant correspondence.



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

REPLY TO
ATTENTION OF
Harbor Programs Branch

January 20, 2004

Suzanne U. Dietrick, Chief
Office of Dredging and Sediment Technology Site Remediation Program
New Jersey Department of Environmental Protection
Assistant Commissioner's Suite, 6th Floor
401 East State Street
Trenton, NJ 08625

Dear Ms. Dietrick,

Thank you for the comments contained in your December 5th, 2003 letter concerning the *Draft Limited Reevaluation Report and Environmental Assessment on Consolidated Implementation of the New York and New Jersey Harbor Deepening Project*. What follows is the District's response to those comments.

Dredging and Construction Equipment Levels

Comment: (Page 2, 1st bullet) types and numbers of construction equipment to be used as part of the proposed consolidated (both vertical and horizontal) harbor deepening project vs. that anticipated for use in the Harbor Navigation Study Feasibility Report and FEIS and the "expedited construction schedule" discussed in the February 28, 2000 letter. If construction equipment levels will be different than those evaluated in the FEIS, additional impact analyses and/or the development and use of Best Management Practices to reduce impacts to water quality and aquatic resources, may be warranted.

The consolidated implementation schedule would reduce the overall duration of short-term impacts by reducing the total in-water construction period. Though consolidated implementation would realize reductions in overall duration and frequencies in drilling, blasting and dredging events by shortening contract durations, it does not add more equipment to a given reach nor does it result in simultaneous actions occurring within a channel that would not have occurred under the implementation plan contemplated in the *Feasibility Report*. Therefore, no additional significant adverse cumulative impacts to air quality, water resources, aquatic biological resources, noise, protected species and wildlife, EFH and cultural resources are expected. Furthermore the overall impacts are anticipated to be less than under the plan in the *Feasibility Report* because the recovery period will sooner without a second round of drilling, blasting, and dredging.

Seasonal Restrictions on Dredging and Deepening Operations

Comment: (Page 2, 2nd bullet) identification of "final" seasonal restrictions on dredging operations – Essential Fish Habitat consultations with National Marine Fisheries Service are ongoing (see DEA, page ES-2, ES.10). Implementation of the anticipated construction schedule for the proposed consolidated dredging project that would ultimately

result in a shorter overall period of dredging activities may be dependent on these seasonal restrictions.

Based on the data collected during the recent aquatic biological sampling programs, the District has reinitiated EFH consultation with the National Marine Fisheries Service (NMFS) to determine what, if any, seasonal restrictions should be recommended on deepening activities to minimize potential adverse impacts during construction of the authorized deepening projects. In addition, the District and NMFS continue to investigate EFH opportunities in upper and lower and Raritan Bays as both a means of reducing seasonal windows and as an opportunity for beneficial use of dredged material. Assessments of the current data from the most recent aquatic biological sampling programs suggest that seasonal restrictions in some areas of the Harbor may no longer be warranted. The District recognizes that seasonal restrictions could affect dredging schedules and is working with NMFS toward optimizing these restrictions prior to issuance of state water quality certifications.

Habitat Mitigation Plan – Acreage

Comment: (Page 4, para. 2) The revised mitigation plan as presented in Appendix D of the EA now calls for only 4.7 acres of wetland enhancement at the Woodbridge Creek Site. Again, the amount of acreage is based on the "Functional Assessment" and Habitat Units of the area of impact and the proposed mitigation site. The Department evaluates mitigation plans for loss of intertidal and subtidal shallows habitat solely by the amount of acres loss to those created or enhanced through a hierarchy that prefers in-kind mitigation at a 1:1 ratio to out-of-kind mitigation at a ratio of 2:1 (See N.J.A.C. 7:7E-3.15(h)). The Department does not recognize the use of Habitat Units when evaluating mitigation plans as we consider other factors such a water quality functions, vegetation, etc. and not just habitat conditions. This is consistent with current practice by the Department when evaluating mitigation plans for freshwater wetlands impacts from other NY District Corps projects (flood control projects) in which freshwater wetlands impacts are anticipated.

USACE regulation (ER) 1105-2-100 (USACE 1990, 1997, 2000) requires that, following the determination of environmental quality changes related to implementation of the proposed project, the current and future conditions of the impacted indicator be determined. To address this requirement, a functional assessment technique was utilized to determine the value of the littoral zone wetlands expected to be disturbed by the project. This habitat value is used to determine the type and amount of compensation required. Because no approved Habitat Evaluation Procedure (HEP) technique for the assessment of littoral zone wetlands was available, a functional assessment questionnaire was developed specifically for this project. Questions were derived from other assessment methods (mainly the Wetland Evaluation Technique [WET]) and from previously observed or documented wetland functions in the project area. The habitat values resulting from the functional assessment are expressed in Habitat Units (HUs).

The functional assessment method was developed to assess two specific habitat types impacted by the project, the permanently submerged littoral zone and the intertidal zone. The functional assessment relies on a series of categories concerning the environmental conditions and wetland functions of the impacted area, not solely on habitat, including: water quality,

nutrient export/ production, fish and wildlife habitat, endangered species habitat, sediment retention, shoreline stabilization, research and education, and visual and aesthetic quality.

The primary objective for this mitigation plan, therefore, is to provide replacement for the loss of habitat as a result of the Recommended Plan. While acreage ratios are one crude measure of the scale of compensatory mitigation efforts, USACE regulations require the use of HUs to ensure that wetland functions and values are maintained. There are currently no mitigation acreage ratio requirements or standards defined under USACE regulations. As described previously, USACE is refining and confirming the projected impacts due to the project, and will consider the Department's comments regarding mitigation acreage ratios when refining mitigation plans.

Comment: (Page 4, para. 3) It is for this reason that the Department is requesting that the Corp re-evaluate the conceptual mitigation plans (A or B) to determine if either of these plans could be redesigned to provide for a minimum of 9.4 acres (2:1 ratio for loss of 4.7 acres of littoral habitat) of wetlands enhancement at the Woodbridge Creek site. The Department is committed to working with the Corps over the next several months to expedite the development of appropriate mitigation plan for the anticipated loss of 4.7 acres of littoral zone in New Jersey from the Harbor Deepening Project.

The District is in the process of refining and confirming the projected impacts due to the project, as additional data on channel and channel side slope design becomes available. Upon refining the top of slope calculations in 2003 based on the finding of substantial consolidated sediment/rock with a resulting steeper side slope angle (a process that is ongoing throughout the life of a USACE construction project), the top of slope alignment in this area for both the 40/41-ft and 50-ft projects has shifted seaward, thus potentially decreasing overall project impacts. The District is currently refining this data and will inform the states of any changes in project impacts and consequent re-evaluation of mitigation requirements as new data is collected. The District is also committed to providing required mitigation should it be determined that additional significant habitat is impacted.

Habitat Mitigation Plan – Costs

Comment: (Page 4, para. 4) In both the conceptual/recommended mitigation plan (Section 4.1 and 4.2), mitigation costs only include costs for HTRW investigations, but does not include costs associated with environmental cleanup or remediation. In addition, costs associated with disposal of contaminated material was only considered for New York sites. It is recommended that costs associated with HTRW investigations and disposal of contaminated material be included in the mitigation costs for the Woodbridge Creek site.

The District is in the process of further evaluating HTRW investigation needs beyond the screening level at the recommended mitigation sites. Where warranted, revised restoration costs will include costs for HTRW investigations and environmental cleanup or remediation as necessary for incremental cost analysis comparisons.

Clean Air Act Compliance

DLRR - Paragraph 47 & 48 - It is our understanding from recent discussions that there is more than one non-federal sponsor for the HDP and that other sponsors/parties may be involved in the issue of use of excess emission reductions. This situation should be clarified in this discussion. In addition, it was also our understanding that parties involved in the HDP were interested in using any excess emission reductions generated by the mitigation strategy for HDP; this narrative does not discuss such usage.

There is only one non-Federal Sponsor for the HDP, the Port Authority of New York and New Jersey. The New Jersey Department of Transportation is the sponsor for the predecessor project Port Jersey Channel Deepening to 41 ft. At the present time the Regional Air Team is developing a plan for how to use any available excess air offsets. Other parties, such as the New York City Department of Transportation will be involved in the use of excess emission reductions, however the Department is not a sponsor of the Harbor Deepening Project.

DEA, Page A-4 - The alternative recommendation currently being reviewed by the RAT will require that the requisite number of tugboats be repowered to meet the reductions needed; this may be an additional 4 tugboats or more, but the amount of reductions needed will dictate the number of tugboats repowered. This caveat needs to be added to this discussion.

Language has been added to clarify this point. The USACE is committed to repowering as many tugs as are needed to meet general conformity.

In order to meet the contemporaneous requirements of General Conformity for the Kill Van Kull Contract Area 5, the PANYNJ was required to buy New Jersey shutdown credits. As stated in New Jersey Permit No. 0000-92-0031.17, these credits are to be retired at the conclusion of the project authorized by this permit. However, given a shortfall in the HAMP in 2004 and given the magnitude of the NOx emission reductions that will come from the retrofit of the Staten Island Ferry Fleet in 2007 and later years, the Department will allow full use of the Kill Van Kull Contract Area 5 shutdown credits so that the HDP can meet the contemporaneous requirements of General Conformity in 2004. However, the terms of New Jersey Permit No. 0000-92-0031.17 will be enforced at the end of 2004 and the credits will be retired.

The USACE assures NJDEP that it has no intention of using the shutdown credits past 2004.

DEA, Page A-5 - Regarding contingency strategies, the Department is very concerned with the contingency strategies that have been chosen, primarily the fact that each of the strategies has a 6 month or longer lead time. Such lead-time certainly increases the 'project implementation risk'. If a measure in the preferred mitigation alternative were not be implemented on time and a contingency strategy was not implemented in sufficient time, it is very likely that the project will have to slow or temporarily halt construction. The HDP is particularly prone to this situation in the 2004-6 period. The Department highly recommends that the Corps take measures to either reduce the lead time on one or more of the contingency strategies or to

implement one or more now so that 'project implementation risk' is much less of a factor, especially in the early years of the HDP.

The USACE agrees that the first two years will be critical and has developed various contingency plans/ideas to ensure that emission offsets equal or exceed emissions from the project. The USACE and PANYNJ are devising ways to use lessons learned from previous efforts to minimize some of the lead times required for certain contingency measures and in other cases to begin setting contingency plans in place. Currently, further detailed implementation of the HAMP is being developed before the start of construction and will be coordinated with the Regional Air Team (RAT) to ensure that the General Conformity requirements are met.

I hope that these responses assure you of the Corps' commitment to pursue all appropriate mitigation for the project and towards, whenever practicable within the confines of federal, state, and local law and regulations, improving habitats, water and air quality for the region. If you have any further questions please direct them to my Project Manager, Mr. Thomas J. Shea, III, who can be reached at (212) 264-5570 or email: thomas.shea@usace.army.mil

Sincerely,

A handwritten signature in black ink, appearing to read "Stuart Piken". The signature is fluid and cursive, with a large initial "S" and a stylized "P".

Stuart Piken, P.E.
Deputy District Engineer
for Program and Project Management



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VIA ELECTRONIC MAIL AND REGULAR US MAIL

December 5, 2003

Mr. Thomas J. Shea, III
Project Manager
Department of the Army
New York District, Corps of Engineers
Jacob K. Javits Federal Building
New York, NY 10278-0090

**Re: DRAFT Limited Reevaluation Report and Environmental Assessment
on Consolidated Implementation of the New York and New Jersey
Harbor Deepening Project (Nov. 2003)**

Dear Mr. Shea:

Please accept the following comments on the above referenced document from NY/NJ Baykeeper ("Baykeeper"). Baykeeper is an advocacy and conservation organization working to protect, preserve and restore the Hudson-Raritan Estuary, of which the NY/NJ Harbor is a part.

Baykeeper recognizes that the New York and New Jersey Harbor Deepening Project is of great importance to the port community, however, this does not mean that environmental concerns or impacts should be given cursory treatment by the implementing agencies. With this in mind, Baykeeper has the following comments.

Air Quality

The study area is currently designated as a severe nonattainment area for ozone, a maintenance area for carbon monoxide, and is in violation of federal standards for particulate matter standards. While this Harbor Deepening Project is acting as the catalyst to move some air quality improvement measures forward in the Port, it is important that this effort continue once state and federal requirements surrounding the project are met.

In general, we support the comments submitted by the New Jersey Department of Environmental Protection (NJDEP) requesting that the Corps further consider the

potential need for additional tugboat repowering and the reduction of the lead time on one or more of the contingency strategies, or alternatively, implementing contingency strategies immediately.

Additional air quality improvement measures to consider include converting yard tractors to alternative fuel and/or installing pollution controls, promoting the use of cleaner fuels and pollution controls in tugboats and other ships, offering incentives for cleaner trucks and locomotives that serve the Port, and requiring docked oceangoing ships and tugboats to shut engines down and plug into dock-side power.

Essential Fish Habitat

The Corps states that armed with new information it has reevaluated potential effects to Essential Fish Habitat (EFH) and has reinitiated consultation with National Marine Fisheries Service "in hopes of reducing or eliminating some of the seasonal windows." (Draft LRR at Para. 50.) The Corps should take the precautionary principle when dealing with EFH in the study area. Information in the Feasibility Report led the Corps to initially implement certain windows and when dealing with a delicate estuarine environment it certainly makes more sense to err on the side of caution.

The Corps states that it has investigated the potential to create EFH in the Harbor as an alternative to one or more seasonal restrictions. As a rule, preserving habitat is certainly preferable to trying to create it elsewhere, and in this case most likely away from the impacted area of the Harbor. The desire for the Corps to beneficially use the dredged material from the project should not trump the need to preserve EFH. The Corps' strong desire to reach its beneficial use goal and its commitment to habitat enhancement/creation should allow it to reach the conclusion that it does not need the incentive of the reduction of the seasonal restrictions in order to create EFH in the Harbor or elsewhere.

Habitat Mitigation

In the Hudson-Raritan Estuary (HRE) wetlands are more critically threatened, making the remaining wetlands even more valuable to the species that depend on them. The remaining network of small tidal and freshwater wetlands in the HRE provide important migratory and breeding habitat for a diversity of waterbirds and landbirds. Because of the extensive loss of wetlands that has occurred in the urban core, the remaining open spaces and habitat, including littoral zone habitat, are essential to the survival of many populations and natural communities distributed throughout the northwestern Atlantic Ocean and the Atlantic flyway. Only about 20% (15,500 acres) of the region's former tidal wetlands remain.¹

Keeping this in mind, the recommended mitigation plan for Woodbridge Creek converts an area of approximately 4.7 acres of *Phragmites* to low marsh and tidal creek. This is for a 4.7 acre impact to littoral zone habitat in New Jersey due to the project. Cutting

¹ NJDEP 1995 Land Use/Land Cover Data.

through the language of "functional assessment" and habitat units, what essentially the Corps is proposing here is an out-of-kind restoration/enhancement at barely a 1:1 ratio. This is completely unacceptable, based not only on New Jersey regulations, but also established science.

Baykeeper requests that the Corps reevaluate its mitigation proposal to include a much higher mitigation ratio – at least a minimum of 3:1. As you are aware, the Harbor Estuary Program Habitat Workgroup has identified numerous priority acquisition and restoration opportunities in the study area. This detailed list can provide the Corps with additional mitigation opportunities should the Woodbridge Creek site prove to be inadequate to fully compensate for the loss of 4.7 acres of littoral zone habitat.

Thank you for this opportunity to comment on the DRAFT Limited Reevaluation Report and Environmental Assessment on Consolidated Implementation of the New York and New Jersey Harbor Deepening Project. I look forward to your response.

Regards,



Deborah A. Mans
Policy Associate

cc: Karen Greene, NOAA-NMFS
Suzanne Dietrick, NJDEP, Chief, Office of Dredging and Sediment Technology



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

REPLY TO
ATTENTION OF
Harbor Programs Branch

January 20, 2004

Deborah A. Mans
Policy Associate
NY/NJ Baykeeper
Building 18, Sandy Hook
Highlands, New Jersey 07732

Dear Ms. Mans,

Thank you for the comments contained in your December 5th, 2003 letter concerning the *Draft Limited Reevaluation Report and Environmental Assessment on Consolidated Implementation of the New York and New Jersey Harbor Deepening Project*. What follows is the District's response to those comments.

Air Quality

The study area is currently designated as a severe nonattainment area for ozone, a maintenance area for carbon monoxide, and is in violation of federal standards for particulate matter standards. While this Harbor Deepening Project is acting as the catalyst to move some air quality improvement measures forward in the Port, it is important that this effort continue once state and federal requirements surrounding the project are met.

It is important to clarify that at this time the Harbor Deepening Project does not occur within the PM nonattainment county (Manhattan). The USACE agrees with the sentiment expressed in the second sentence of the comment and hopes that the effort and time invested in the HDP Harbor Air Management Plan (HAMP) becomes a model for others both in this region and around the United States. Furthermore, the benefits from the Staten Island ferry retrofits will continue to benefit the region after construction of the Harbor Deepening Project has been completed and the general conformity requirements stemming therefrom have been met.

In general, we support the comments submitted by the New Jersey Department of Environmental Protection (NJDEP) requesting that the Corps further consider the potential need for additional tugboat repowering and the reduction of the lead-time on one or more of the contingency strategies, or alternatively, implementing contingency strategies immediately.

The USACE agrees with the commenter that the first two years will be critical and has developed various contingency plans/ideas to ensure that emission offsets equal or exceed emissions from the project. Further detailed implementation of the HAMP is being developed before the start of construction and will be coordinated with the Regional Air Team (RAT) to ensure that the General Conformity requirements are met. At this time the tugboat repowering program has the flexibility to increase or decrease the number of tugs to be repowered.

Additional air quality improvement measures to consider include converting yard tractors to alternative fuel and/or installing pollution controls, promoting the use of cleaner fuels and pollution controls in tugboats and other ships, offering incentives for cleaner trucks and locomotives that serve the Port, and requiring docked oceangoing ships and tugboats to shut engines down and plug into dock-side power.

The USACE appreciates the ideas presented by the commenter and, as presented in the HAMP documentation, has already evaluated several of these suggestions as contingency plans.

Essential Fish Habitat

The Corps states that armed with new information it has reevaluated potential effects to Essential Fish Habitat (EFH) and has reinitiated consultation with National Marine Fisheries Service "in hopes of reducing or eliminating some of the seasonal windows." (Draft LRR at Para. 50.) The Corps should take the precautionary principle when dealing with EFH in the study area. Information in the Feasibility Report led the Corps to initially implement certain windows and when dealing with a delicate estuarine environment it certainly makes more sense to err on the side of caution.

The Corps states that it has investigated the potential to create EFH in the Harbor as an alternative to one or more seasonal restrictions. As a rule, preserving habitat is certainly preferable to trying to create it elsewhere, and in this case most likely away from the impacted area of the Harbor. The desire for the Corps to beneficially use the dredged material from the project should not trump the need to preserve EFH. The Corps' strong desire to reach its beneficial use goal and its commitment to habitat enhancement/creation should allow it to reach the conclusion that it does not need the incentive of the reduction of the seasonal restrictions in order to create EFH in the Harbor or elsewhere.

The Corps is committed to protecting and enhancing EFH affected by the Harbor Deepening Project and has taken the precautionary approach in recommending seasonal restrictions. However, as recent aquatic biological sampling programs have provided more detailed data, the District has reinitiated EFH consultation with the National Marine Fisheries Service (NMFS) to determine if any of the seasonal restrictions initially recommended to minimize potential adverse impacts are actually necessary. Assessments of the current data from the most recent aquatic biological sampling programs suggest that seasonal restrictions in some areas of the Harbor may no be longer warranted, as those areas may be marginally utilized, if at all. Nevertheless, the Corps is striving to create a win-win situation through the reuse of material from the project to create and/or enhance EFH, thereby directly creating and/or enhancing the amount of habitat available to the fish.

Habitat Mitigation

In the Hudson-Raritan Estuary (HRE) wetlands are more critically threatened, making the remaining wetlands even more valuable to the species that depend on them. The remaining

network of small tidal and freshwater wetlands in the HRE provide important migratory and breeding habitat for a diversity of waterbirds and land birds. Because of the extensive loss of wetlands that has occurred in the urban core, the remaining open spaces and habitat, including littoral zone habitat, are essential to the survival of many populations and natural communities distributed throughout the northwestern Atlantic Ocean and the Atlantic flyway. Only about 20% (15,500 acres) of the region's former tidal wetlands remain.¹

Keeping this in mind, the recommended mitigation plan for Woodbridge Creek converts an area of approximately 4.7 acres of Phragmites to low marsh and tidal creek. This is for a 4.7-acre impact to littoral zone habitat in New Jersey due to the project. Cutting through the language of "functional assessment" and habitat units, what essentially the Corps is proposing here is an out-of-kind restoration/enhancement at barely a 1:1 ratio. This is completely unacceptable, based not only on New Jersey regulations, but also established science.

Baykeeper requests that the Corps reevaluate its mitigation proposal to include a much higher mitigation ratio – at least a minimum of 3:1. As you are aware, the Harbor Estuary Program Habitat Workgroup has identified numerous priority acquisition and restoration opportunities in the study area. This detailed list can provide the Corps with additional mitigation opportunities should the Woodbridge Creek site prove to be inadequate to fully compensate for the loss of 4.7 acres of littoral zone habitat.

Functional assessments are used to determine the habitat value loss, which in turn determines the value to be compensated for. That the mitigation happens to be 1:1 based on acres is immaterial as we are assessing value, not acres. This is fully consistent with National policy of value for value with mitigation impacts and USACE regulation (ER) 1105-2-100 (USACE, 2000) which requires that, following the determination of environmental quality changes related to implementation of the proposed project, the current and future conditions of the impacted indicator be determined. To address this requirement, a functional assessment technique was utilized to determine the value of the littoral zone wetlands expected to be disturbed by the project. This habitat value is used to determine the type and amount of compensation required. Because no approved Habitat Evaluation Procedure (HEP) technique for the assessment of littoral zone wetlands was available, a functional assessment questionnaire was developed specifically for this project. Questions were derived from other assessment methods (mainly the Wetland Evaluation Technique [WET]) and from previously observed or documented wetland functions in the project area. The habitat values resulting from the functional assessment are expressed in Habitat Units (HUs).

The functional assessment method was developed to assess two specific habitat types impacted by the project, the permanently submerged littoral zone and the intertidal zone. The functional assessment relies on a series of categories concerning the environmental conditions and wetland functions of the impacted area, not solely on habitat, including: water quality, nutrient export/ production, fish and wildlife habitat, endangered species habitat, sediment retention, shoreline stabilization, research and education, and visual and aesthetic quality.

¹ NJDEP 1995 Land Use/Land Cover Data.

Based on this assessment a replacement value was determined. To meet that value required restoration of 4.7 acres of existing *Phragmites*-dominated marsh.

I hope that these responses assure you of the Corps' commitment to pursue all appropriate mitigation for the project and towards, whenever practicable with in the confines of federal, state, and local law and regulations, improving habitats, water and air quality for the region. If you have any further questions please direct them to my Project Manager, Mr. Thomas J. Shea, III, who can be reached at (212) 264-5570 or email: thomas.shea@usace.army.mil

Sincerely,

A handwritten signature in black ink, appearing to read "Stuart Piken", with a stylized, flowing script.

Stuart Piken, P.E.
Deputy District Engineer
for Program and Project Management



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Habitat Conservation Division

James J. Howard Marine
Sciences Laboratory
74 Magruder Road
Highlands, New Jersey 07732

December 5, 2003

Mr. Stuart Piken
Deputy District Engineer
Program and Project Management
US Army Corps of Engineers, New York District
Jacob K. Javits Federal Building
New York, New York 10278-0090

Dear Mr. Piken:

We have review the draft Limited Reevaluation Report (LRR) and the draft Environmental Assessment (EA) on the Consolidated Implementation of the New York and New Jersey Harbor Deepening Project (HDP). The documents describe and evaluate the ACOE's proposal to consolidate some of the previously authorized deepening projects such as the Arthur Kill at 41/40 feet, Kill van Kull/Newark Bay at 45 feet, and the Port Jersey at 41 feet. NOAA Fisheries has coordinated extensively with the ACOE on the HDP and we have provided your office with detailed comments and essential fish habitat conservation recommendations in our letter dated July 27, 2001.

According to the LRR and the EA, the consolidated implementation plan includes several design modifications to the HDP. Specifically, the current proposal includes the vertical consolidation of Kill van Kull (KVK) contract area 4b and contract area 5 to dredge from 40 feet to 50 feet. Realignment and consolidation are planned in the Port Jersey Channel.

A portion of the southern end of the South Elizabeth Channel will also be realigned, resulting in the deepening of 4.4 acres of sublittoral habitat (aquatic habitat deeper than 6 feet at MLW) to 50 feet as well as the removal of the Allied Signal Pier. In the KVK, a portion of the Commerce Street Pier will be removed and the rip-rap placement along the north shore of Staten Island near Richmond Terrace and the Atlantic Salt property is proposed for permanent deferral (eliminated from the project).

In the Arthur Kill, the channel will be realigned in two locations. This will not result in the loss of any additional areas of shallow water habitat. The Proctor and Gamble Pier located on the north shore of Staten Island at Port Ivory will also be removed. Contract areas in the Ambrose, Anchorage Newark Bay, Arthur Kill, KVK, and Bay Ridge Channel will be re-delineated to reduce the overall number of contract areas. The Mariner's Marsh site in Staten Island has been removed from consideration as a mitigation site at the request of the New York Department of Environmental Conservation. A site adjacent to Old Place Creek has been proposed as its



replacement. Lastly, 2,500 feet of a Transco gas line has been identified for relocation in the Ambrose Channel.

In general, we support the proposed consolidation of the HDP. From the information provided, it does not appear that the proposed consolidation and project modifications are sufficient to warrant a reinitiation of the essential fish habitat (EFH) consultation required under Section 305 (b)(2) of the Magnuson-Stevens Act (MSA). All of the conservation recommendations made in our letter dated July 27, 2001 remain unchanged. As discussed in that letter, specific locations (portions or reaches of navigation channels), where and when time of year restrictions should be invoked are subject to reinitiation of the consultation should additional information become available about the equipment (type and number), timing and resource use that may modify the recommendations. This is particularly applicable to the channels where the contract areas will be redelineated. As we have done in the past, we will gladly work with your staff to develop a sequencing schedule for the revised contract areas that will protect resources of concern to us and to allow the deepening project to move forward.

In 2000, NOAA Fisheries and the ACOE concluded consultation pursuant to Section 7 of the Endangered Species Act for the HDP. A Biological Opinion was issued on October 13, 2000. It does not appear that the proposed project modifications are sufficient to warrant a reinitiation of the Section 7 consultation at this time. As a result, the terms and conditions of the Biological Opinion remain in effect. However, should project plans change, or should new information become available which modifies the basis for this determination, consultation should be reinitiated.

We are concerned about the mitigation proposed by the ACOE to offset the 6.25 acres of intertidal and subtidal shallows that will be lost by the deepening project. As currently proposed, it appears that only 6.8 acres of *Phragmites* dominated marsh at Old Place Creek and Woodbridge Creek will be enhanced as compensatory mitigation for 6.25 acres of shallow water habitat loss. The functional assessment prepared by the ACOE to justify this ratio of mitigation does not document how the proposed mitigation will compensate for the impacts to fishery resources, particularly since the mitigation is out-of-kind. Typically, a minimum mitigation of 3:1 ratio for enhancement is required to offset impacts to wetlands and shallow water habitat. A lower ratio can be used if habitat creation is used as mitigation. A 3:1 ratio is consistent with what is required of permittees whose impacts are authorized under the ACOE's regulatory program. There does not appear to be a reason why a different standard should be applied in this case. As a result, we recommend a minimum of 18.75 acres of enhancement be provided for the loss of 6.25 acres of habitat. Less acreage would be acceptable if creation was used in combination with the enhancement.

In addition, according to the LRR/EA, the 21.5 acre Old Place Creek contains 9.2 acres of *Phragmites* dominated wetlands. The mitigation plan only proposes to enhance 2.6 acres of the *Phragmites*. No explanation is given to explain why the remaining area was not included in the mitigation plan. Further, leaving 6.4 acres of the site as a *Phragmites* monoculture will jeopardize the success of the wetlands enhancement because a remaining *Phragmites* will serve as a source for reinvasion of the site. Similarly at 24.7 acre Woodbridge Creek, only 4.7 acres of

8.2 acres of *Phragmites* dominated wetlands will be enhanced. In order to compensate adequately for the project impacts and to maximize the successful enhancement of the wetlands at the two mitigation sites, the mitigation plans should be redesigned to include the enhancement of all of the *Phragmites* dominated wetlands on the two sites (17.4 acres). The revised plan should attempt to maximize the value of the site for fishery resources since that is the habitat that will be impacted by the deepening and should include a long-term monitoring and maintenance plan that addresses invasive species. Once the redesigned plan is completed, more detailed site plans should be provided to us for review before they are finalized.

Lastly, the Appendix E2 describes a proposed essential fish habitat enhancement program. Due to the short comment time frame and other staff commitments, we have not had the opportunity to review fully this section of the document. We will provide you with comments as appropriate in the coming weeks and we will continue to coordinate with your staff on the projects proposed in the enhancement program. However, it should be understood that the projects proposed in the EFH enhancement program may require individual consultation with NOAA Fisheries under both Section 7 of the Endangered Species Act and Section 305 (b)(2) of the MSA.

We look forward to continued coordination on this project. As always, we are available to meet with your staff to discuss our comments. Our past coordination with your staff proved very successful in protecting resources of concern to us, especially winter flounder early life stages and their EFH, while allowing dredging all year by carefully designing acceptance area boundaries and sequencing the dredging of these areas within each contract area. If you have any questions or need additional information, please contact Karen Greene at 732 872-3023

Sincerely,



Stanley W. Gorski
Field Offices Supervisor

long:120203/auspdlr.wpd

cf: HCD Milford - Rusanowsky
PRD - Crocker
FWS Pleasantville
NJDEP Office of Dredging
EPA Region II



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

REPLY TO
ATTENTION OF

Harbor Programs Branch

January 20, 2004

Stanley W. Gorski
National Oceanic and Atmospheric Administration
National Marine Fisheries Service/Habitat Conservation Division
James J. Howard Marine Sciences Laboratory
74 Magruder Road
Highlands, New Jersey 07732

Dear Mr. Gorski,

Thank you for the comments contained in your December 5th, 2003 letter concerning the *Draft Limited Reevaluation Report and Environmental Assessment on Consolidated Implementation of the New York and New Jersey Harbor Deepening Project*. What follows is the District's response to those comments.

Comment: (Page 2, para. 1) All of the conservation recommendations made in our letter dated July 27, 2001 remain unchanged. As discussed in that letter, specific locations (portions or reaches of navigation channels), where and when time of year restrictions should be invoked are subject to reinitiation of the consultation should additional information become available about the equipment (type and number), timing and resource use that may modify the recommendations. This is particularly applicable to the channels where the contract areas will be redelineated.

The consolidated implementation schedule would reduce the overall duration of short-term impacts by reducing the total in-water construction period. Though consolidated implementation would realize reductions in overall duration and frequencies in drilling, blasting and dredging events by shortening contract durations, it does not add more equipment to a given reach nor does it result in simultaneous actions occurring within a channel that would not have occurred under the implementation plan contemplated in the *Feasibility Report*. Therefore, no additional significant adverse cumulative impacts to air quality, water resources, aquatic biological resources, noise, protected species and wildlife, EFH and cultural resources are expected. Furthermore the overall impacts are anticipated to be less than under the plan in the *Feasibility Report* because the recovery period will be shorter (occur sooner) without a second round of drilling, blasting, and dredging. If additional information on the equipment type and number substantially changes the potential for adverse impacts to occur, the District will reinitiate consultation with NMFS.

Assessments of the current data from the most recent aquatic biological sampling programs (See Appendix C of the Draft EA) suggest that seasonal restrictions in some areas of the Harbor may no be longer warranted. Based on the data collected during the recent aquatic

biological sampling programs, the District wishes to reinitiate EFH consultation with the National Marine Fisheries Service (NMFS) to determine what, if any, seasonal restrictions should be recommended on deepening activities to minimize potential adverse impacts during construction of the authorized deepening projects. In addition, the District wishes to continue to investigate EFH opportunities for habitat restoration in the upper and lower and Raritan Bays as both a means of reducing seasonal windows and as a cost effective beneficial use of dredged material.

Comment: (Page 2, para. 3) We are concerned about the mitigation proposed by the ACOE to offset the 6.25 acres of intertidal and subtidal shallows that will be lost by the deepening project. As currently proposed, it appears that only 6.8 acres of Phragmites dominated marsh at Old Place Creek and Woodbridge Creek will be enhanced as compensatory mitigation for 6.25 acres of shallow water habitat loss. The functional assessment prepared by the ACOE to justify this ratio of mitigation does not document how the proposed mitigation will compensate for the impacts to fishery resources, particularly since the mitigation is out-of-kind. Typically, a minimum mitigation of 3:1 ratio for enhancement is required to offset impacts to wetlands and shallow water habitat. A lower ratio can be used if habitat creation is used as mitigation. A 3:1 ratio is consistent with what is required of permittees whose impacts are authorized under the ACOE's regulatory program. There does not appear to be a reason why a different standard should be applied in this case. As a result, we recommend a minimum of 18.75 acres of enhancement be provided for the loss of 6.25 acres of habitat. Less acreage would be acceptable if creation was used in combination with the enhancement.

The objective of the mitigation plan is to compensate for the unavoidable impacts to ecological resources that will remain after avoidance, minimization, and reduction/ elimination techniques are fully considered and implemented to the extent possible. As discussed previously, USACE regulation (ER) 1105-2-100 states that full credit shall be given to the beneficial aspects of an alternative plan, or project, before consideration is given to adding separable mitigation features. However, regardless of such beneficial aspects, the guidelines contain very distinct requirements for wetlands. Specifically, the mitigation plan must ensure that adverse impacts to wetland resources are fully mitigated, and an effort must be made to meet the Administration's goal of no net loss of wetlands. The primary objective for this mitigation plan, therefore, is to provide replacement for the loss of littoral zone habitat as a result of implementation of the Recommended Plan. While acreage ratios are one crude measure of the scale of compensatory mitigation efforts, they don't consider value gained or lost. This is why there are no mitigation acreage ratio requirements or standards defined under USACE regulations, but rather a policy of value for value. As described previously, USACE is refining and confirming the projected impacts due to the project, and will consider NMFS comments regarding mitigation acreage ratios when refining mitigation plans.

USACE regulation (ER) 1105-2-100 (USACE 1990, 1997, 2000) requires that, following the determination of environmental quality changes related to implementation of the proposed project, the current and future conditions of the impacted indicator be determined. To address this requirement, a functional assessment technique was needed to determine the value of the littoral zone wetlands expected to be disturbed by the project. This habitat value is used to determine the type and amount of compensation required. Since no approved Habitat Evaluation

Procedure (HEP) technique for the assessment of littoral zone wetlands was available, a functional assessment questionnaire was developed specifically for this project. Questions were derived from other assessment methods (mainly the Wetland Evaluation Technique [WET]) and from previously observed or documented wetland functions in the project area. The habitat values resulting from the functional assessment are expressed in Habitat Units (HUs). In addition to assessing the value of the habitat that would be disturbed as a result of the Recommended Plan, the functional assessment is also used to predict the value of the compensatory mitigation options. This method applies to a truer means of compensating for losses rather than the cruder acre ratio which does not take into account value gained or lost, which is more closely aligned with the Federal standard of mitigation value for value.

The functional assessment method was developed to assess two specific habitat types impacted by the project, the permanently submerged littoral zone and the intertidal zone. The functional assessment relies on a series of questions concerning the environmental conditions and wetland functions of the impacted area, including fish habitat.

Comment: (Page 2, para. 3) In addition, according to the LRR/EA, the 21.5 acre Old Place Creek contains 9.2 acres of Phragmites dominated wetlands. The mitigation plan only proposes to enhance 2.6 acres of the Phragmites. No explanation is given to explain why the remaining area was not included in the mitigation plan.

USACE mitigation guidelines specify that wetland mitigation plans should provide compensation and replacement based on habitat unit losses. Based on these guidelines, the recommended mitigation plans for the selected mitigation sites achieve these goals. Those physical components of the wetland ecosystem, which would return the most HUs and were considered the most valuable in restoring overall wetland functions to each area were determined. Of the four restoration strategies discussed (i.e., preservation, enhancement, restoration and creation), creation (i.e. converting upland areas to wetlands) and restoration (converting *Phragmites* dominated habitat to wetlands dominated by other plant species) provided the highest functional improvement to each wetland complex and yielded the highest incremental HU gain.

At the selected mitigation sites, there was almost no opportunity for creation (Old Place Creek had no creation areas and Woodbridge Creek had 0.4 acres). Consequently, the recommended mitigation plan focused on restoration of each site. For the two recommended sites, the recommended plan, converts a total of 2.6 acres in Old Place Creek and another 4.2 acres in Woodbridge Creek of *Phragmites* dominated areas into low marsh and tidal creek. This restoration of 6.8 acres of *Phragmites* into a higher value wetland provides a total of approximately 141 net HUs, a more than equivalent replacement for the 109.55 HUs for the littoral zone disturbances projected to result from the project. No additional acreage of mitigation would be warranted under the value for value policy.

Comment: (Page 2, para. 4) Further, leaving 6.4 acres of the site as Phragmites monoculture will jeopardize the success of the wetlands enhancement because a remaining Phragmites will serve as a source for reinvasion of the site.

As described in Appendix D, to prevent *Phragmites* reinvasion, an area between the restoration area and remaining *Phragmites* area at both sites will be treated to remove the *Phragmites* and planted with shrubs to serve as a barrier to the remaining *Phragmites* dominated area.

Comment: (Page 3, para. 1) The revised plan should attempt to maximize the value of the site for fishery resources since that is the habitat that will be impacted by the deepening and should include a long-term monitoring and maintenance plan that addresses invasive species.

As described earlier, a functional assessment was conducted to determine the value of the littoral zone wetlands expected to be disturbed by the project. This habitat value is used to determine the type and amount of compensation required. In addition to assessing the value of the habitat that would be disturbed as a result of the implementation of the Recommended Plan, the functional assessment is also used to predict the value of the compensatory mitigation options. The functional assessment method was developed to assess two specific habitat types impacted by the project, the permanently submerged littoral zone and the intertidal zone. The functional assessment relies on a series of questions concerning the environmental conditions and wetland functions of the impacted area, including fish habitat.

As described earlier, USACE is refining and confirming the projected impacts due to the project, and will consider NMFS comments regarding mitigation area design. For impact and mitigation evaluation, mitigation plans prepared for the EA will remain conceptual and at the level provided in the draft EA. More detailed site plans will be developed during construction design and permitting.

I hope that these responses assure you of the Corps' commitment to pursue all appropriate mitigation for the project and towards, whenever practicable within the confines of federal, state, and local law and regulations, improving habitats and water quality for the region. If you have any further questions please direct them to my Project Manager, Mr. Thomas J. Shea, III, who can be reached at (212) 264-5570 or email: thomas.shea@usace.army.mil

Sincerely,



Stuart Piken, P.E.
Deputy District Engineer
for Program and Project Management



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

ER 03/996

December 4, 2003

Mr. Thomas J. Shea, III
Project Manager
Programs and Project Management Division
Corps of Engineers, New York District
Jacob K. Javits Federal Building
New York, NY 10278-0090

Dear Mr. Shea:

This is in regard to the request for the Department of the Interior's comments on the Draft Limited Reevaluation Report (LLR) and Draft Environmental Assessment (EA) on Consolidated Implementation of the New York and New Jersey Harbor Deepening Project.

This is to inform you that the Department will have comments, but will be unable to reply within the allotted time as we have just received your transmittal. Please consider this letter as a request for an extension of time in which to comment on these documents.

Our comments should be available by January 16, 2004.

Sincerely,

Terence N. Martin P.E.
Team Leader, Natural Resources
Management
Office of Environmental Policy
and Compliance



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

REPLY TO
ATTENTION OF

Harbor Programs Branch

11 December 2003

Mr. Terence N. Martin, P.E.
Team Leader, Natural Resources Management
Office of Environmental Policy and Compliance
United States Department of the Interior
1849 C Street, NW MS 2340
Washington, DC 20240

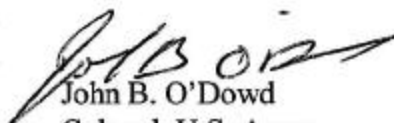
Dear Mr. Martin:

The New York District, U.S. Army Corps of Engineers has received your letter dated December 4, 2003 requesting an extension to the comment period for the Draft Limited Reevaluation Report and Draft Environmental Assessment for the New York and New Jersey Harbor Deepening Project.

The New York and New Jersey Harbor Deepening Project is the U.S. Army Corps of Engineer's No. 1 Civil Works project and a top Administration priority. Congress authorized the project in the Water Resources Development Act 2000 and the project has been the subject of a full National Environmental Policy Act review (Final Environmental Impact Statement was completed in 1999). The current reports are specific to the consolidated implementation of the project, which represents only a minor change from the original documentation. The consolidation implementation is specifically aimed at cost savings and a reduction in overall environmental and social impacts associated with dredging. Accordingly, we would not deem an extension of time as warranted. Considering the nature of the issues presented in the reports, we feel that thirty days is sufficient time to conduct a review and have not received any other requests of this nature. As such, I will continue to proceed with the finalization of the reports. We will consider any comments you present on a case-by-case basis as they apply to our contract plans and specifications.

If you have any further questions or concerns, please contact my Project Manager, Mr. Tom Shea, at (212) 264-5570 or me at (212) 264-0100.

Sincerely,


John B. O'Dowd
Colonel, U.S. Army
District Engineer



State of New Jersey

DEPARTMENT OF TRANSPORTATION
1035 Parkway Avenue
PO Box 600
Trenton, New Jersey 08625-0600

James E. McGreevey
Governor

John F. Lettiere
Commissioner

December 1, 2003

Mr. Thomas J. Shea, P.E.
Project Manager
US Army Corps of Engineers
NY District
26 Federal Plaza
New York, NY 10278

Please Reply To:
NJDOT
Office of Maritime Resources
PO Box 837
Trenton, NJ 08625-0837
Phone: 609-530-4770
Fax: 609-530-4860

Dear Mr. Shea:

We have reviewed the Draft Limited Reevaluation Report and Environmental Assessment on the Consolidated Implementation of the New York and New Jersey Harbor Deepening Project that was forwarded on November 5, 2003. We wish to express our continued support for the Harbor Deepening Project and thank the NY District for its leadership on this project.

The subject document adequately addresses the changes that have been suggested to the Harbor Deepening Project by the stakeholders in order to realize the most rapid schedule at the lowest cost to the taxpayer by taking advantage of consolidations with the ongoing 45 and 41 foot projects as far as possible without incurring additional environmental impacts.

We are particularly pleased with the acknowledgment of the State of New Jersey's plans to advance the Port Jersey element of the HDP in this document. We do, however, request that the Corps adjust the summary of the Port Jersey Channel project to reflect the current approach to this project as stated in the 2004 Appropriations Conference Report dated November 7, 2003, PL 90-306 quoted directly below:

Provided further, That no funds made available under this Act or any other Act for any fiscal year may be used by the Secretary of the Army to carry out the construction of the Port Jersey element of the New York and New Jersey Harbor or reimbursement of the Local Sponsor for the construction of the Port Jersey element until commitments for construction of container handling facilities are obtained from the non-Federal sponsor for a second user along the Port Jersey element.

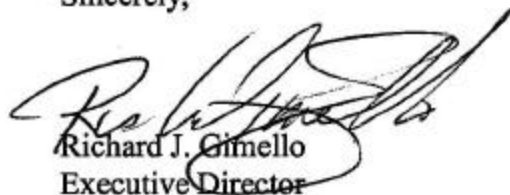
It is our belief that this language will allow the Secretary to consider cost-sharing the Port Jersey element of the 50-foot project at a much earlier time than stated in the LRR. OMR wishes to

state for the record that it is our interpretation that the referenced "commitment" will be the time when the City of Bayonne awards a contract for the design, construction and operation of a container facility at the former MOT, which is expected in mid-2004.

OMR also wishes to state for the record, that any and all emissions reductions obtained from the planned tug repowering effort for achieving air conformity for the construction of the Port Jersey element, and paid for by the State of New Jersey, in absence of a cost-sharing agreement with the Federal Government, will be used at the sole discretion of the State of New Jersey, Department of Transportation.

Thank you for the opportunity to review this document. We are, as always committed to the maintenance and development of our maritime transportation infrastructure.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard J. Gimello", is written over the typed name and title.

Richard J. Gimello
Executive Director
Office of Maritime Resources

cc: Stu Piken, NYD
Mike Riley, OMR
Bryce Wisemiller, NYD
Suzanne Dietrick, NJDEP



REPLY TO
ATTENTION OF

NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

January 23, 2004

Harbor Programs Branch

Mr. Richard J. Gimello
Executive Director
Office of Maritime Resources
PO Box 837
Trenton, NJ 08625-0837

Dear Mr. Gimello:

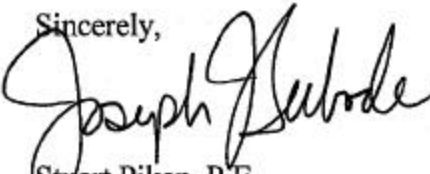
Thank you for your letter dated December 1, 2003 concerning the Limited Reevaluation Report and Environmental Assessment for the Consolidated Implementation of the New York and New Jersey Harbor Deepening Project. We appreciate your comments, and particularly those with respect to the Port Jersey Channel.

The timing of the construction of the Port Jersey Channel is important to the Corps. We continue to look forward to working with you on this important component of the overall project. In light of this, we need to continue to keep track of the progress being made at the former MOTBY facility. We will need to include language in the NY/NJ Harbor 50-foot Deepening Project Cooperation Agreement concerning the construction of the marine terminal at the former MOTBY in order to determine when we will be able to provide the non-Federal project sponsor credit in accordance our laws, regulations and policies. Further, we understand that you or your agent will acquire the air quality mitigation offsets required by the permit conditions in order that this work may be creditable in the future. The costs of those offsets that the Corps determines are necessary to perform the 41-foot to 50-foot dredging work, if the Corps would have performed the work as part of the NY/NJ Harbor 50-foot Deepening Project, will not be credited to the sponsor until the necessary second user condition at MOTBY is met.

The Corps of Engineers understands your position as to the use of possible excess air quality mitigation offsets. However, once the Office of Maritime Resources/New Jersey Department of Transportation requests credit for the work to be applied towards the NY/NJ Harbor 50-foot Deepening Project, those excess offsets may then either be retroactively subject to the project or the allowable credits will be prorated to only those offsets that the Corps determines were necessary for the project.

Should you have further questions, please contact my Project Manager, Mr. Thomas Shea at (212) 264-5570 or e-mail: thomas.shea@usace.army.mil.

Sincerely,


for Stuart Piken, P.E.
Deputy District Engineer for
Project Management

Copies Furnished:
Mr. Richard Larrabee, PANYNJ



REPLY TO
ATTENTION OF

Harbor Programs Branch

DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

January 20, 2004

Clifford G. Day
United States Fish and Wildlife Service
New Jersey Field Office
927 North Main Street, Building D
Pleasantville, New Jersey 08232

Dear Mr. Day,

Thank you for the comments contained in your August 28, 2003 letter concerning the *Planning Aid Letter (PAL)* to address the technical review of the implemented consolidation schedule of the New York and New Jersey Harbor Deepening Project. What follows is the District's response to those comments.

Comment: Other Fish and Wildlife Resources *The Harbor and specifically the project area are used by a diverse community of fishes, such as striped bass (*Morone saxatilis*), spot (*Leiostomus xanthurus*), blueback herring (*Alosa aestivalis*), bluefish (*Pomatomus saltatrix*), windowpane (*Scophthalmus aquosus*), summer flounder (*Paralichthys dentatus*) and winter flounder (*Pseudopleuronectes americanus*) ... Dredging disturbances may impact these species by removing habitat and disrupting seasonal movements, foraging and reproduction. The Service recommends continued consultation with the National Marine Fisheries Service (NMFS) to protect these species.*

Based on the data collected during the recent aquatic biological sampling programs, the District has reinitiated EFH consultation with the National Marine Fisheries Service (NMFS) to determine what, if any, seasonal restrictions or other actions, including habitat restoration should be recommended on deepening activities to minimize potential adverse impacts during construction of the authorized deepening projects.

Environmental Contaminants

Many of the comments in this section indicate a lack of familiarity with the New York District /Environmental Protection Agency Region 2 ocean disposal sampling and testing program, that relies on guidance within the national Department of the Army/ USEPA *Evaluation of Dredged Material Proposed for Ocean Disposal Testing Manual* (or "Green Book"). This document, as well as recent efforts by EPA Region 2 to revamp the evaluation process used in our bioaccumulation analysis through the Remediation Materials Workgroup (RMW), provides technical guidance for determining the suitability of dredged material for ocean disposal. Although your comments regarding sampling and testing protocols for ocean

disposal fall well outside of the scope of the consolidated EA, we will respond to several of your major concerns (as noted below), but we do recommend contacting our Dredged Material Management Section for a more detailed clarification of these issues.

Comment: a. *The sediments will be resuspended and redistributed during dredging, causing increased exposure to fish and wildlife*

Sediment resuspension is an obvious consequence of all dredging events associated with fine-grained sediments. The impacts, however, are short-lived and usually limited to the immediate vicinity of the dredging operation. Past state agency (New York and New Jersey) Water Quality Certificates usually contain conditions requiring no barge overflow and use of an environmental bucket for the silty material proposed for upland disposal, which will reduce resuspension and its impacts. Resuspension of red clay and glacial till should not be an issue because of the cohesiveness and larger grain sizes, respectively, of these types of sediment. We note that ship movements through shallow channel areas with accumulated fine grained silts that have not been dredged will cause similar resuspension impacts on a more regular basis than the type of dredging events proposed by this project.

Comment: b. *The Service has concerns as to whether the newly re-exposed benthic surfaces will further contaminate fish and wildlife.*

As indicated in the drawings found in the Public Notice (FP63-345678CC-2002) referenced in your letter, the newly exposed benthic surface will be composed of bedrock and Pleistocene glacial till; this pre-industrial material would certainly be "less contaminated" than the recent black silts which currently form the surface of portions of the project site. It is arguable that contamination of fish and wildlife stemming from exposure of benthic surfaces will be reduced as a result of implementation of the recommended plan

Comment: c. *Title 40 CFR part 227.6c(2) states that "...bioassays shall be conducted with appropriate sensitive benthic marine organisms...". This evaluation did not include use of a vertebrate species; reliance on invertebrate species for determining acute toxicity is a general concern for HARS management.*

40 C.F.R. §227.27 (d) further defines "appropriate sensitive benthic marine organisms" as species "...representing filter-feeding, deposit feeding and burrowing species chosen from the most sensitive species accepted by EPA as being reliable test organisms to determine the anticipated impact on the (disposal) site..." The comment appears to overlook the extensive solid phase bioaccumulation testing and subsequent data evaluation performed for this project. Data from the bioaccumulation of over 75 separate analyses (including 17 dioxin congeners) using two test organisms (clams and worms) was compared to EPA risk based criteria. These risk-based criteria were generated using human health and ecological (e.g., fish impact) endpoints. The NYD/ Region 2 analysis concluded that this material does not have the potential to cause undesirable impacts (e.g., mutagenic or carcinogenic effects) to aquatic marine biota or to human health.

There is no requirement in the regulations, nor recommendation in the Green Book, to use a vertebrate rather than invertebrate species for these tests. Benthic aquatic invertebrates have been chosen for these analyses by the Corps and EPA since they are more directly exposed to sediment contaminants by burrowing into, eating and /or filtering the sediment. These types of exposures are particularly critical for evaluating the effects of chemicals (*i.e.*, chlorinated compounds) that have an affinity for sediment where an aqueous exposure to fish is not likely. Also, outside of the dioxin exception identified in the comment, invertebrates are generally much more sensitive to toxicants than fish and wildlife. Neither the croaker nor scup you suggest are species recommended by the Green Book or the Inland Testing Manual. The NYD/ Region 2 use of *Ampelisca* and *Mysidopsis* for the solid phase acute toxicity test fully meets the regulatory and guidance criteria noted above.

Comment: *d. Sediment in Contract Areas 4 b and 8 have not been adequately characterized for HARS placement and relied on composited samples which did not vertically and horizontally isolate "hot spots"*

As indicated in the above referenced Public Notice, sediment in the subject areas is composed of 4 major sediment types:

- rock, to be placed at state artificial reef sites;
- red-brown clay, proposed for HARS placement;
- glacial till, proposed for HARS placement;
- black silt, proposed for upland disposal.

Because these materials were present in different locations throughout the project area, testing reaches were separated vertically and horizontally for purposes of further evaluation. Rock does not require any analysis for reef disposal, and the predominantly pre-industrial, pro-glacial red clays have already been characterized and found suitable for HARS placement without further testing, as per NYD/EPA Region 2 MOA of January 2000. The black silt was tested for upland disposal. The only material from KVK Areas 4b and 8 that was actually collected and tested for HARS placement was the glacial till, which was analyzed using three distinct composites (testing reaches C4R3, C8R1 and C8R2), and followed the requirements described in the Ocean Dumping Regulations at 40 C.F.R. 227.6 and 40 C.F.R. 227.27, as well as the guidance in the NYD/Region 2 Regional Testing Manual and Green Book. Test results met the criteria for ocean disposal, as well as for placement at the HARS as Remediation Material as described in 40 C.F.R. §228.15. The material, therefore, was adequately characterized for HARS disposal.

Please note, the NYD and EPA Region 2 have recently signed a second MOA addressing the need for HARS testing of glacial till in the Arthur Kill, Kill van Kull and Port Jersey areas of the Harbor. Test results from the three Area 8 and 4b till reaches was part of the data set used to make the determination that further project specific testing of glacial till from the above mentioned areas for the purpose of HARS placement will not be required. Copies of the red clay or till memos can be furnished to you upon request.

We further note that the purpose of ocean disposal testing is not to isolate "hotspots" at the dredging site. As per EPA's Ocean Dumping Regulations, the main purpose for analyzing dredged sediment proposed for ocean disposal is to determine whether any unacceptable adverse effects on human health or the marine ecosystem will occur from disposal of the material in ocean waters.

Comment: *e. Delineation of the HARS Primary Remediation Area (PRA) was based on survival tests on Ampelisca abdita. Tests were not performed on a vertebrate sensitive to dioxin (TCDD) that is known to occur at concentrations as high as 41.7 ppb at the HARS, and is associated with a variety of adverse effects upon fish and wildlife, such as immunotoxicity, impaired reproduction, and development, endocrine disruption wasting syndrome and mortality.*

We do not understand the relationship between your comment on the absence of vertebrate testing involving dioxin to establish the HARS PRA, and the current dredging proposal for consolidated implementation of the Harbor Deepening Project that is the subject of this letter. Your comments would have been pertinent to the Designation of the HARS EIS (1997).

Comment: *f. The Service believes that the present approach for assessing ecological risk in the Harbor requires reform. A toxicity equivalence (TEQ) approach for assessing risk to fish and wildlife from organochlorine contaminants can and should be used in a system like the Harbor. The EPA has recently released a preliminary draft that provides an outline for how and when to apply this type of methodology.*

The primary purpose of ocean disposal testing is to assess human health and ecological impacts at the disposal site, not at the dredging site (e.g. in the Harbor). Impacts at the dredging site from proposed dredging projects are principally addressed under the several finalized NEPA documents produced by the Corps for the authorized dredging projects and by the state agencies through their water quality certificate reviews and coastal zone management programs.

The Corps is familiar with the existence of the EPA guidance document you reference, which considers the impacts of dioxin-like effects of PCBs. Although the Corps is considering these kinds of approaches in future technical guidance, this EPA document remains, at present, a preliminary draft, which should not and will not be used to make regulatory decisions until it is finalized. Please note however, that the NYD/ EPA Region 2 ocean program has used the TEQ approach since 1997 when assessing the 17 dioxin congeners analyzed in our bioaccumulation testing. The extent to which we will further use TEQs for other compounds, assessments and endpoints depends, in part, on EPA's finalization of their draft dioxin reassessment document.

In October 2000, EPA Region 2 convened the first meeting of the Remediation Materials Workgroup (RMW), which was formed to review and comment on EPA's proposed revisions to the HARS bioaccumulation testing evaluation framework for both human health and ecological criteria. The proposed criteria rely heavily on a risk-based approach. Subsequently, the RMW prepared a series of charges for a Scientific Peer Review panel pertaining to evaluation of potential human health effects from HARS disposal. Peer review comments were received in

June 2002 and several of the investigations recommended by the reviewers are underway. Information and data for the second phase of the Peer Review, which will focus on ecological health, are currently being evaluated.

Comment: g. *Generally, if a risk assessment makes comparisons to only sediment and/or soil guidelines, or relies on bioassays to only invertebrates, a thorough assessment of the impacts to federal trust species cannot be made.*

See response to comment f.

The Corps' Federal Ocean Testing Program does not make comparisons to sediment and/or soil guidelines when project sediment's suitability as remediation material at the HARS is determined. Please note that, as indicated earlier, these decisions are made using the results of biological effects based tests, including toxicity and bioaccumulation analyses.

The Corps periodically conducts regional and national training on dredged material evaluation and management techniques used in our ocean and inland testing programs. Attendance by local, state and federal agency representatives who interface with these programs is encouraged. You and/or your staff may want to consider attending one of these sessions, which provides an in-depth review of the regulations, guidance and evaluation procedures related to our HARS testing process.

For any additional concerns regarding the implementation of the New York District /Environmental Protection Agency Region 2 ocean disposal sampling and testing program, please contact:

Monte Greges
Chief, Dredged Material Management Section
New York District
212-264-5620.

I hope that these responses assure you of the Corps' commitment to pursue all appropriate mitigation for the project and towards, whenever practicable within the confines of federal, state, and local law and regulations, improving habitats and water quality for the region. If you have any further questions please direct them to my Project Manager, Mr. Thomas J. Shea, III, who can be reached at (212) 264-5570 or email: thomas.shea@usace.army.mil

Sincerely,



Stuart Piken, P.E.
Deputy District Engineer
for Program and Project Management

PERTINENT CORRESPONDENCE

1. To Col. John B. O'Dowd from Mr. Richard J. Gimello, dated October 8, 2003
2. To Mr. Richard M. Larrabee from Col. John B. O'Dowd, dated September 16, 2003
3. To Mr. Ronald Pinzon from Ms. Kathryn D. McGuckin, dated May 28, 2003
4. To Ms. Dorothy P. Guzzo from Mr. Leonard Houston, dated May 16, 2003
5. To Mr. Don Klima from Mr. Leonard Houston, dated May 16, 2003
6. To Ms. Ruth L. Pierpont from Mr. Leonard Houston, dated May 16, 2003
7. To Ms. Amanda Sutphin from Mr. Leonard Houston, dated May 16, 2003
8. To Mr. Frank Santomauro, P.E. from Clifford G. Day, dated April 23, 2003
9. To Ms. Bernadette Castro from Mr. Leonard Houston, dated March 7, 2003
10. MEMORANDUM FOR COMMANDER, HQUSACE from Mr. Samuel P. Tosi, P.E., dated February 18, 2003
11. To Ms. Dorothy P. Guzzo from Mr. Leonard Houston, dated January 28, 2003
12. To Mr. Leonard Houston from Dorothy P. Guzzo, dated December 10, 2002
13. To Col. John B. O'Dowd from Mr. Richard M. Larrabee, dated August 29, 2002
14. To Mr. Frank Santomauro, P.E. from Mr. Bradley M. Campbell, dated September 19, 2002
15. To Bean Stuyvesant from the Port Authority of New York dated August 26, 2002
16. To Mr. Joseph J. Seebode from Mr. Thomas H. Wakeman, dated July 25, 2002
17. To Mr. Rick Gimello from Col. John B. O'Dowd, dated June 14, 2002
18. To Ms. Mary Ellen Kris from Col. John B. O'Dowd, dated June 14, 2002
19. To Mr. Chris Zeppie from Col. John B. O'Dowd, dated June 14, 2002
20. To Mr. William Muszynski, P.E. from Stuart Piken, P.E., dated May 28, 2002
21. To Mr. Robert Hargrove from Col. John B. O'Dowd, dated April 9, 2002
22. To Col. John B. O'Dowd from Mr. Bradley M. Campbell, dated March 11, 2002
23. To Mr. Bradley M. Campbell from Col. John B. O'Dowd, February 21, 2002
24. To Ms. Erin M. Crotty from Col. John B. O'Dowd, February 21, 2002
25. To Ms. Jane Kenny from Col. John B. O'Dowd, dated February 21, 2002
26. To Mr. Frank Santomauro, P.E. from Mr. Lewis Nagy, dated January 28, 2002
27. To Col. John B. O'Dowd from Mr. William Muszynski, P.E., December 26, 2001
28. To Mr. Joseph W. Westphal from Mr. Richard A. Mertens, dated October 19, 2000



NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

REPLY TO
ATTENTION OF

Programs and Project Management Division

16 September 2003

Mr. Richard M. Larrabee, Director
Port Commerce Department
The Port Authority of New York & New Jersey
225 Park Avenue South, 11th Floor
New York, NY 10003

Dear Mr. Larrabee:

Thank you for your letter of July 1, 2003 regarding the Comprehensive Port Improvement Plan's (CPIP's) port/land use scenarios for developments along Port Jersey Channel in Bayonne and Jersey City, Hudson County, New Jersey.

As requested in your letter, the District has preliminarily examined the three options for possible future land use along the Port Jersey Channel, as outlined in the May 13, 2003 *CPIP Land Use Allocations Report*, with a view toward providing insights with respect to whether implementation of the option would (a) satisfy the requirements for a finding of federal interest under the single owner policy (see EP 1165-2-1, para. 12-6), and (b) provide sufficient container handling capacity to support economic justification of Pathway 4 (*i.e.*, the Port Jersey Channel to the ocean. See *New York and New Jersey Harbor Navigation Study Feasibility Report* for more information).

The question of the existence of federal interest under the single owner policy is primarily one of land ownership. If there were no changes in land ownership, but the land were used in the manner described in the three options, each of them would, in the view of the District and subject to Corps higher authority review, satisfy the requirements for a finding of federal interest. As to whether any of these options can be, or more importantly, will be made operational prior to the execution of the Project Cooperation Agreement (PCA) for the Harbor Deepening Project (HDP) is a matter for consideration by your agency, as the non-federal sponsor for the project, along with the State of New Jersey, and the involved local municipality(ies). We would appreciate your response in writing as to what future conditions we can reasonably anticipate at the facilities along the Port Jersey Channel, as well as the other facilities potentially served by the HDP, and when we should plan for these conditions. This information is critical to our being able to finalize the negotiations on the PCA for the HDP.

The District has preliminarily examined the question of whether any of the three options provide sufficient container handling capacity to support economic justification of Pathway 4. For this, we retained the commerce forecast, fleet distribution, loading pattern, and discount rate that were used in the *Feasibility Report*. The only variables that were allowed to change were the land area devoted to container handling operations and assumed land productivity in terms of lifts per acre per year. On that basis, all but one of the three options appear to yield a benefit to cost ratio (BCR) of 1.1 or greater for Pathway 4. The one option that appears to not yield a BCR of 1.1 or

greater for Pathway 4 was the existing condition (*i.e.*, only the 100 acres of Global Terminal at 3,500 lifts per acre per year are devoted to container handling use). That option yielded a BCR of 0.8. We have attached a simple table that identifies our findings. Please note, though, that this examination is preliminary and predicated on keeping many of the past variables the same as in the *Feasibility Report*, and that it is subject to Corps higher authority approval.

We look forward to continued cooperative effort between our agencies as we move ahead with implementation of the Harbor Deepening Project. If you have any questions regarding these issues, please do not hesitate to contact me or Mr. Thomas Shea, Project Manager, at 212-264-5570.

Sincerely,



John B. O'Dowd
Colonel, U.S. Army
District Engineer

Enclosure

Copies Furnished:

Mr. Richard Gimello, Office of Maritime Resources/New Jersey Department of Transportation



State of New Jersey

DEPARTMENT OF TRANSPORTATION
1035 Parkway Avenue
PO Box 600
Trenton, New Jersey 08625-0600

James E. McGreevey
Governor

John F. Lettiere
Commissioner

Please Reply To:
NJDOT
Office of Maritime Resources
PO Box 837
Trenton, NJ 08625-0837
Phone: 609-530-4770
Fax: 609-530-4860

October 8, 2003

Colonel John B. O'Dowd
District Engineer
New York District
U.S. Army Corps of Engineers
26 Federal Plaza, 21st Floor
New York, New York 10278-0090

Dear Colonel O'Dowd:

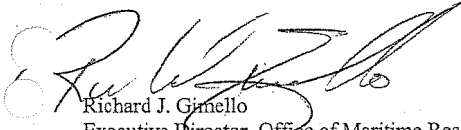
The State of New Jersey Department of Transportation wishes to formally announce our intent to seek a Department of the Army (DA) permit for the deepening of the Port Jersey Channel, as described and evaluated within the Corps' Harbor Navigation Project Feasibility Report and Final Environmental Impact Statement dated December 1999. Contingent upon our acquiring the DA permit, we intend to construct the 50' Port Jersey Channel in advance of the construction of the Port Jersey Channel portions of the consolidated Harbor Deepening Project (HDP). We believe that advancing the development and construction of this element further demonstrates the State of New Jersey's commitment toward developing the 21st Century Port and Estuary that is strongly supported by many agencies and organizations within the region.

Specifically, we request a pre-permit application meeting with the appropriate New York District staff so that we may coordinate the technical information and schedule of actions necessary to obtain the DA permit. We believe that the decreased adverse impact to the environment, the acceleration of economic benefits to the consumers in the region, the overall reduced costs of construction to the taxpayers, and the improved navigational design of the consolidation support this action.

We understand that the Corps is currently evaluating minor improvements to the HDP design. Please note that should this action go forward as proposed, the State may, at some point in the future and subject to the Secretary of the Army's approval, seek credit for the portions of this action that cannot now be cost-shared as authorized under the various Water Resources Development Acts and Energy and Water Appropriation Acts.

To discuss this action further or to arrange the pre-permit application meeting on this matter, please contact either Mr. W. Scott Douglas at 609-530-4773 or me at 609-530-4770.

Sincerely,



Richard J. Ginello
Executive Director, Office of Maritime Resources

CC:

Richard Tomer, Chief, Regulatory Branch
Joseph Seebode, Chief, Harbor Programs Branch
Bryce Wisemiller, Harbor Programs Branch ✓
Mark Roth, Regulatory Branch
Annette Barry-Smith, PANY/NJ
Thomas Wakeman, PANY/NJ

New York State Department of Environmental Conservation
Division of Environmental Permits, Region 2
47-40 21st Street, Long Island City, NY 11101-5407
Phone: (718) 482-4997 • FAX: (718) 482-4975
Website: www.dec.state.ny.us



May 28, 2003
Via FAX (212-264-0961) & US Mail

Ronald Pinzon
Department of the Army
New York District, Corp of Engineers
Jacob K. Javits Federal Building
New York, NY 10278-0090

Re: NY/NJ 50' Harbor Deepening Mitigation Project

Dear Mr. Pinzon:

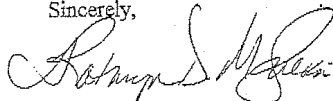
This is a follow up to our meeting on May 22, 2003 regarding the NY/NJ 50' Harbor Deepening Mitigation project. The Department has reviewed the mitigation alternatives presented in the May 22 meeting and submits the following recommendations:

1. Please provide the Department with the calculations of the amount of habitat proposed to be restored versus enhanced, and the amount of existing functional habitat at each site as you proceed with characterization of the proposed sites.
2. The Department recommends that no further consideration be given to Neck Creek East, Neck Creek Mall, and Neck Creek Southeast as sites for mitigation. These sites are undesirable mitigation locations because of restricted hydrological connection and/or storm water inputs. Successful restoration is unrealistic without major changes to the drainage of these sites.
 - a) The Department disagrees with your ranking of Neck Creek West and does not recommend this site for further consideration. Mapped freshwater wetlands on the site and ownership issues (much of it is privately-owned) preclude the possibility of substantive tidal wetland restoration. In addition, the Department and other agencies are working towards acquiring and preserving some of the northern portions of the site. At best, several formerly connected wetlands provide a small opportunity for restoration.

3. The Department does not recommend pursuing mitigation at Mariners Harbor based on the mitigation proposal presented for this site at the last interagency meeting. The Department disagrees that creation of intertidal marsh in exchange for existing shoal/mudflat habitat would be a satisfactory mitigation project.
4. The Department agrees with your ranking of the Old Place Creek site and recommends that it remain under consideration. Functional high marsh habitat occurs at this location, therefore it is imperative to calculate the actual amount of habitat restoration versus enhancement at this location. The Department will consider mitigation at this location.
5. The Department recommends that the site at the City-owned lands adjacent to Sarnelli property be included on the list of potential restoration sites because of the sizeable habitat improvement potential in this publicly-held area. A desk-top evaluation using Block and Lot information and the 1974 DEC tidal wetland maps would be helpful to determine enhancement and restoration opportunities.
6. The Department agrees with your ranking of the Saw Mill Creek site and recommends that it remain under consideration. The site provides a true opportunity to restore filled wetlands. Including the proximal Francesco property in a desktop feasibility study for the Saw Mill Creek location is highly recommended.
7. The Department will continue to pursue the possibility of the GATX property becoming available for mitigation purposes, but as the outcome of that pursuit is uncertain, they agree to assist the Corps with developing one or a combination of the above sites (and the sites indicated in the 2000 Draft Mitigation Plan) as potential mitigation for the impacts associated with the Harbor Deepening project.

If you have any questions or concerns, please contact me at the above address, or by telephone at (718) 482-4078.

Sincerely,



Kathryn D. McGuckin
Environmental Analyst II

cc: S. Zahn, NYSDEC Division of Marine Resources
L. Vogel, NYSDEC Division of Marine Resources
CHRON/file



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

May 16, 2003

REPLY TO
ATTENTION OF

Environmental Assessment Section
Environmental Analysis Branch

Ms. Dorothy P. Guzzo
Deputy State Historic Preservation Officer
Historic Preservation Office
New Jersey Department of Environmental Protection
CN 404
Trenton, New Jersey 08625-0404

Dear Ms. Guzzo:

The U.S. Army Corps of Engineers, New York District (Corps), is pleased to furnish you with a copy of the signed Amended Programmatic Agreement (PA) among the United States Army Corps of Engineers, the New Jersey State Historic Preservation Officer and the New York State Historic Preservation Officer, and for the New York and New Jersey Harbor Navigation Study, Kings, Queens and Richmond Counties, New York and Essex, Hudson, Monmouth and Union Counties, New Jersey (Enclosure 1). The Amended PA has been accepted and signed by all parties. A signed copy has been furnished to the Advisory Council on Historic Preservation and to the New York City Landmarks Preservation Commission.

Thank you for your assistance in the Section 106 process. If you or your staff require additional information or have any questions, please contact Lynn Rakos, Project Archaeologist, at (212) 264-0229.

Sincerely,

Leonard Houston
Chief, Environmental Analysis Branch

Enclosure



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

May 16, 2003

Environmental Assessment Section
Environmental Analysis Branch

Don L. Klima, Director
Eastern Office of Review
The Advisory Council on Historic Preservation
The Old Post Office Building
1100 Pennsylvania Avenue, NW, #809
Washington, DC 20004

Dear Mr. Klima:

The U.S. Army Corps of Engineers, New York District (Corps), is pleased to furnish you with a copy of the signed Amended Programmatic Agreement (PA) among the United States Army Corps of Engineers, the New Jersey State Historic Preservation Officer and the New York State Historic Preservation Officer, and for the New York and New Jersey Harbor Navigation Study, Kings, Queens and Richmond Counties, New York and Essex, Hudson, Monmouth and Union Counties, New Jersey (Enclosure 1). This is an amendment to the PA signed in 2000. The original PA is attached to the amended document.

The Amended PA expands the Area of Potential Effects (APE) to include not only those areas described in the signed PA but also areas being considered for environmental mitigation purposes. The Amended PA also reflects the more recent Congressional authority under which this project is authorized. The stipulations agreed to in the original PA will be executed for all areas with the APE as now defined.

The Amended PA has been accepted and signed by all parties. A signed copy has been furnished to both states and to the New York City Landmarks Preservation Commission.

Thank you for your assistance in the Section 106 process. If you or your staff require additional information or have any questions, please contact Lynn Rakos, Project Archaeologist at (212) 264-0229.

Sincerely,

Leonard Houston
Chief, Environmental Analysis Branch

Enclosure



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

May 16, 2003

REPLY TO
ATTENTION OF

Environmental Assessment Section
Environmental Analysis Branch

Ms. Ruth L. Pierpont
New York State Office of Parks,
Recreation and Historic Preservation
Historic Preservation Field Services Bureau
Peebles Island, P.O. Box 189
Waterford, NY 12188-0189

Dear Ms. Pierpont:

The U.S. Army Corps of Engineers, New York District (Corps), is pleased to furnish you with a copy of the signed Amended Programmatic Agreement (PA) among the United States Army Corps of Engineers, the New Jersey State Historic Preservation Officer and the New York State Historic Preservation Officer, and for the New York and New Jersey Harbor Navigation Study, Kings, Queens and Richmond Counties, New York and Essex, Hudson, Monmouth and Union Counties, New Jersey (Enclosure 1). The Amended PA has been accepted and signed by all parties. A signed copy has been furnished to the Advisory Council on Historic Preservation and to the New York City Landmarks Preservation Commission.

Thank you for your assistance in the Section 106 process. If you or your staff require additional information or have any questions, please contact Lynn Rakos, Project Archaeologist at (212) 264-0229.

Sincerely,

Leonard Houston
Chief, Environmental Analysis Branch

Enclosure



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

May 16, 2003

REPLY TO
ATTENTION OF

Environmental Assessment Section
Environmental Analysis Branch

Amanda Sutphin
Director of Archaeology
New York City Landmarks Preservation Commission
100 Old Slip
New York, New York 10005

Dear Ms. Sutphin:

The U.S. Army Corps of Engineers, New York District (Corps), is pleased to furnish you with a copy of the signed Amended Programmatic Agreement (PA) among the United States Army Corps of Engineers, the New Jersey State Historic Preservation Officer and the New York State Historic Preservation Officer, and for the New York and New Jersey Harbor Navigation Study, Kings, Queens and Richmond Counties, New York and Essex, Hudson, Monmouth and Union Counties, New Jersey (Enclosure 1). This is an amendment to the PA signed in 2000. The original PA is attached to the amended document.

The Amended PA expands the Area of Potential Effects (APE) to include not only those areas described in the signed PA but also areas being considered for environmental mitigation purposes. The Amended PA also reflects the more recent Congressional authority under which this project is authorized. The stipulations agreed to in the original PA will be executed for all areas with the APE as now defined.

The Amended PA has been accepted and signed by all parties. A signed copy has been furnished to both states and to the Advisory Council on Historic Preservation.

Thank you for your assistance on this project. If you or your staff require additional information or have any questions, please contact Lynn Rakos, Project Archaeologist at (212) 264-0229.

Sincerely,

Leonard Houston
Chief, Environmental Analysis Branch

Enclosure



In Reply Refer to:

EC-PL-NY-03-28

United States Department of the Interior

FISH AND WILDLIFE SERVICE

New Jersey Field Office
Ecological Services
927 North Main Street, Building D
Pleasantville, New Jersey 08232
Tel: 609/646 9310
Fax: 609/646 0352
<http://njfieldoffice.fws.gov>



APR 23 2003

Frank Santomauro, P.E., Chief
Planning Division, New York District
U.S. Army Corps of Engineers
26 Federal Plaza
New York, New York 10278-0090

Re: March 10, 2003 request by the Department of the Army, Corps of Engineers (Corps) for a Planning Aid Letter (PAL) to address the technical review of the implemented consolidation schedule of Contract Area 4b for the New York and New Jersey Harbor (Harbor) Deepening Project.

Dear Mr. Santomauro:

The U.S. Fish and Wildlife Service (Service) has reviewed the above referenced request, plans, and relevant Testing Memorandum dated June 13, 2002. The Corps is proposing to consolidate the 45-foot deepening of Contract Area 4b with the 50-foot deepening of the same area as suggested in the 2000 *New York and New Jersey Harbor Navigation Feasibility Report* (U.S. Army Corps Of Engineers, 2000). The Service has already commented on the 45-foot deepening of Contract Area 4b in a January 9, 2003 letter from our New York Field Office to the Corps Harbor Programs Branch regarding Supplemental Public Notice No. FP63-345678CC-2002. In that letter, we stated our concern that the sediment in Contract Areas 4b and 8 has not been adequately characterized to determine suitability for disposal at the Historic Area Remediation Site (HARS). The comments provided in that regulatory correspondence remain germane to this PAL.

INTRODUCTION

Based on conversations between representatives from the Corps Environmental Branch and the Service's New Jersey Field Office during a March 4, 2003 Program Review Meeting, the Service understands that the Harbor Navigation Study (i.e., 50-foot deepening) Feasibility Report was completed; the project is now in the Planning, Engineering, and Design Phase; and the Harbor Navigation Project received congressional authorization under the 2000 Water Resources Development Act. The Corps is now looking to consolidate the ongoing 45-foot deepening with the authorized 50-foot deepening throughout the Harbor. The Corps will likely conduct an

Ecological Evaluation on the consolidation during the summer of 2003. The Corps will look for Service concurrence with the consolidation effort and presumably request a PAL with the understanding that Fish and Wildlife Coordination Act (FWCA) (48 Stat. 401; 16 U.S.C. 661 *et seq.*) and Endangered Species Act (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) Section 7 comments have already been provided separately for the 45 and 50-foot deepening. Therefore, this letter represents a PAL for the consolidation of deepening projects in Contract Area 4b only. Furthermore, as you are aware, the Service does not have an Interagency Agreement (IAG) with the Corps to receive transfer funds for this review or other reviews regarding the Harbor-wide consolidation effort. Further review of consolidation efforts in Contract Area 4b or elsewhere in the Harbor will require a scope-of-work for an IAG and reimbursable transfer funding.

The Service and Corps share responsibilities for resources in the Harbor. For example, two of the goals and objectives given in the January 22, 2003 national *Partnership agreement for water resources and fish and wildlife* between the Service and Corps (U.S. Fish and Wildlife Service and U.S. Army Corps of Engineers, 2003a) are to: 1) express our joint commitment to the conservation and restoration of fish and wildlife resources while ensuring environmental sustainability of our Nation's water resources; and 2) encourage a spirit of cooperation and synergy between our agencies at the national, regional, and field office levels. The FWCA outlines consultations between our agencies. For example, Section 2(a) states that:

"...whenever the waters of any stream or other body of water are proposed or authorized to be impounded, diverted, the channel deepened, or the stream or other body of water otherwise controlled or modified for any purpose whatever, including navigation and drainage, by any department or agency of the United States, or by any public or private agency under Federal permit or license, such department or agency first shall consult with the United States Fish and Wildlife Service,... with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof in connection with such water-resource development."

Section 2(c) of the FWCA outlines the requirement for transfer of funds:

"In the case of construction by a Federal agency, that agency is authorized to transfer to the United States Fish and Wildlife Service, out of appropriations or other funds made available for investigations, engineering, or construction, such funds as may be necessary to conduct all or part of the investigations required to carry out the purposes of this section."

The January 23, 2003 national *Agreement between the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers for conducting Fish and Wildlife Coordination Act activities* (U.S. Fish and Wildlife Service and U.S. Army Corps of Engineers, 2003b) states:

"A major goal of this Agreement is to ensure the FWS is invited and funded, when applicable, to participate early in and throughout the planning process to facilitate the FWCA's equal consideration provision."

AUTHORITY

The following comments have been prepared under the authority of the Fish and Wildlife Coordination Act (48 Stat. 401; 16 U.S.C. 661 *et seq.*) and the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*), and are consistent with the intent of the Service's Mitigation Policy (Federal Register, Vol. 46, No. 15, Jan 23, 1981).

THREATENED AND ENDANGERED SPECIES

Except for an occasional transient bald eagle (*Haliaeetus leucocephalus*), no other federally listed or proposed threatened or endangered flora or fauna under Service jurisdiction are known to occur within the vicinity of Contract Area 4b. If additional information on federally listed species becomes available, or if project plans change, this determination may be reconsidered.

Peregrine falcons (*Falco peregrinus*) have been known to nest on the Bayonne and Goethals Bridges as well as other sites throughout the New York and New Jersey Harbor (U.S. Fish and Wildlife Service, 1997). The eastern portion of Contract Area 4b lies within 1,000 feet of the Bayonne Bridge. In August 1999, the Service removed the peregrine falcon from the List of Endangered and Threatened Wildlife and Plants. However, section 4(g)(1) of the ESA requires monitoring of de-listed species for a minimum of 5 years. The Service decided to monitor the peregrine falcon for 13 years to provide data that will reflect the status of at least two generations of birds. If it becomes evident during this period that the peregrine falcon is not maintaining its recovered status, the species could be re-listed under the ESA. The peregrine falcon continues to be protected by the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703-713), which prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests except when specifically authorized by the Department of the Interior. The peregrine falcon also continues to be protected under New Jersey law (N.J.S.A. 23:2A *et seq.*) as a State-listed (endangered) species.

Peregrine falcons nesting in the Harbor area are accustomed to ambient levels of noise and line-of-sight disturbances. However, the effect of vibrations and noise associated with drilling, blasting, and dredging on nesting peregrine falcons is not well understood. Continued coordination with the New Jersey Department of Environmental Protection (NJDEP) and New York Department of Environmental Conservation (NYDEC) is required to determine areas to avoid during the peregrine falcon nesting season (March 1 to July 31) pursuant to the *Biological Opinion on the effects of channel deepening activities within the Arthur Kill, Kill Van Kull, and Newark Bay Channels, New York and New Jersey, on the peregrine falcon* (U.S. Fish and Wildlife Service, 1997) and the *Biological Assessment for threatened and endangered species in the Port of NY/NJ* (U.S. Army Corps of Engineers, 1999) prepared for the 45-foot deepening and

the *Fish and Wildlife Coordination Act Section 2(b) Report on the New York and New Jersey Harbor Navigation Study* (U.S. Fish and Wildlife Service, 1999) regarding the 50-foot deepening. The terms, conditions and recommendations from these documents still must be observed for the life of the two deepening projects, whether or not consolidation occurs. This requirement includes no channel construction/maintenance activities within 0.25 miles of an active peregrine falcon nest during the critical nesting period of March 1 to July 31. Questions regarding peregrine falcon nesting in the Harbor area should be directed to the following agency representatives:

Kathy Clark, Principal Zoologist
Endangered and Non-Game Species Program
Division of Fish and Wildlife
New Jersey Department of Environmental Protection
PO Box 400
Trenton, New Jersey 08625
(609) 628-2103

Peter Nye, Unit Leader
Endangered Species Unit
Division of Fish, Wildlife, and Marine Resources
New York State Department of Environmental Conservation
625 Broadway, 5th Floor
Albany, New York 12233
(518) 402-8859

Lisa Arroyo, Fish and Wildlife Biologist
New Jersey Field Office
U.S. Fish and Wildlife Service
927 N. Main St., Bldg. D
Pleasantville, New Jersey 08232
(609) 646-9310, ext. 49

SERVICE COMMENTS

Benefits of decreasing the overall duration of Harbor deepening projects through consolidation include reduced physical removal of organisms, frequency of turbidity plumes, and duration of blasting vibrations. The Service acknowledges the economic advantages of avoiding multiple mobilizations and demobilizations of dredging equipment and the benefits to the surrounding residential communities. However, project implementation would still cause a variety of adverse impacts to fish and wildlife. Previous letters and reports from the Service (e.g., U.S. Fish and Wildlife Service, 1996, 1997, and 1998) have addressed many environmental concerns with the ongoing blasting and dredging projects along the Kill Van Kull and Newark Bay Channels, including direct mortality of aquatic organisms, disturbance to foraging and nesting birds, water quality degradation, disruption of water circulation patterns, and loss of shallow aquatic habitat.

The Service's concerns expressed in previous documentation remain.

The western portion of Contract Area 4b lies within 1,000 feet of Shooters Island. This Island has provided nesting habitat for great egret (*Casmerodius albus*), snowy egret (*Egretta thula*), tricolored heron (*E. tricolor*), black crowned night heron (*Nycticorax nycticorax*), glossy ibis (*Plegadis falcinellus*), green heron (*Butorides striatus*), and great black-backed gull (*Larus marinus*) (Kerlinger, 1996). The status of nesting birds on Shooters Island has been questionable over the past several years; however, some wading birds are still believed to be nesting on the island and osprey (*Pandion haliaetus*) may have recently established a nest. The Service expects nesting attempts to improve on the island as disturbances such as trespassing are reduced. Birds using this area are accustomed to some noise disturbance associated with the docks along Staten Island, shipping traffic, and flight and landing patterns for Newark Airport. However, the proposed project would involve disturbances not common in the area (i.e., drilling and blasting). Outside of the nesting season (i.e., fall and spring), wading birds disperse and would not be vulnerable to this disturbance. In a January 30, 2002 letter to the Corps, the Service recommended deepening activities associated with the consolidation of Contract Area 5 (immediately north of 4b) observe a 1,000-foot buffer around Shooter's Island from March 1 to September 1 to minimize impacts to nesting birds. The Service reiterates this recommendation for work in Contract Area 4b.

The Service has concerns regarding the contaminants present in sediments of the Harbor, whether resuspended during dredging, and if they will cause adverse impacts to biota at their disposal location. Contaminants in the sediments of Contract Area 4b have not been adequately characterized. Part of the material from these Contract Areas is proposed for ocean disposal. Title 40 C.F.R. part 227.6c(2) states that materials shall be deemed acceptable for ocean dumping when "bioassay results on the solid phase of the wastes do not indicate occurrence of significant mortality...these bioassays shall be conducted with appropriate sensitive benthic marine organisms..." Some characterization was performed for a Supplemental Public Notice to Public Notice No. FP63-345678CC. This characterization included whole sediment bioassays on composite samples from Contract Areas 4b and 8 to examine percent survival. Survival was lower in the samples than reference sediments for only two out of six tests. However, the species used were an amphipod, *Ampelisca abdita*, and a mysid shrimp, *Mysidopsis bahia*. Evaluation of the solid phase for this material did not include a vertebrate species such as Atlantic croaker (*Micropogon undulatus*). Invertebrate species are not especially sensitive to many planar halogenated compounds occurring in the Harbor, such as coplanar PCB's, dioxins, and furans, because invertebrates lack the aryl hydrocarbon receptor, the principal mechanism for toxicity of these compounds in vertebrates. Reliance on invertebrate species for determining acute toxicity is a general concern the Service has with the management of the HARS. For example, the delineation of the HARS Primary Remediation Area was made based on survival tests on *Ampelisca abdita*. Tests were not performed on a vertebrate that would be sensitive to organochlorine contaminants such as 2,3,7,8-TCDD that is known to occur at concentrations as high as 41.7 ng/kg (d.w.) at the HARS. Furthermore, we are unaware of any ecological risk assessment to higher vertebrate organisms such as avifauna associated with these contract areas

and HARS disposal. Lastly, the tests used to characterize sediment contamination in Contract Areas 4b and 8 relied on composited samples. Due to the history of pollution in the area, the Harbor is likely to have "hot spots" with especially high concentrations of some types of contaminants. Extensive compositing will not reveal these areas.

Waterfowl, particularly greater scaup (*Aythya marila*), lesser scaup (*A. affinis*), and canvasback (*A. valisineria*), use the open water in the project area during the winter (New Jersey Division of Fish, Game, and Wildlife, 1996). Most of the overwintering waterfowl migrate back to nesting areas outside of the project area in the spring. The proposed consolidation in Contract Area 4b is not likely to disturb overwintering waterfowl beyond the level of currently permitted work.

The Harbor and specifically the project area are used by a diverse community of fishes, such as striped bass (*Morone saxatilis*), spot (*Leiostomus xanthurus*), blueback herring (*Alosa aestivalis*), bluefish (*Pomatomus saltatrix*), windowpane (*Scopthalmus aquosus*), summer flounder (*Paralichthys dentatus*) and winter flounder (*Pseudopleuronectes americanus*) (U.S. Army Corps of Engineers, 1980; National Marine Fisheries Service, 1994; U.S. Fish and Wildlife Service, 1996; Greene, pers. comm., 2002). Dredging disturbances may impact these species by removing habitat and disrupting seasonal movements, foraging, and reproduction. The Service recommends continued consultation with the National Marine Fisheries Service (NMFS) to protect these species. Additional information regarding aquatic species in the Harbor can be directed to:

Karen Greene, Fisheries Biologist
Habitat Conservation Division
National Marine Fisheries Service
James J. Howard Marine Sciences Laboratory
Magruder Road, Building 74
Highlands, New Jersey 07732
(732) 872-3023

CONCLUSIONS

The Service's Mitigation Policy emphasizes the importance of avoiding and minimizing the impacts of a project on federal trust resources. Pursuant to this policy, the Service recommends the following:

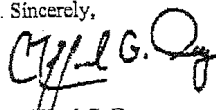
1. Implement the terms, conditions and recommendations that were provided in previous correspondence from the Service regarding both the 45 and 50-foot deepening. If the Corps is unwilling to observe these terms, conditions and recommendations, further formal consultation under the ESA or FWCA will be required for the consolidation.
2. Continue to coordinate with the NJDEP, NYDEC, and the Service to minimize potential adverse impacts to the peregrine falcon.

3. Perform no channel construction/maintenance activities within 0.25 miles of an active peregrine falcon nest during the critical nesting period of March 1 to July 31.
4. Maintain a buffer of 1,000 feet around Shooters Island for dredging and associated activities from March 1 to September 1 to avoid or minimize potential adverse impacts to nesting birds.
5. Perform more comprehensive analyses of sediment toxicity.
6. Characterize the ecological risks to higher vertebrate organisms such as fish and migratory birds.
7. Continue to coordinate with the NMFS to avoid or minimize potential adverse impacts to aquatic species.

As previously noted, the Service does not have an IAG with the Corps to conduct this or further reviews and hence no obligation to submit FWCA or planning aid reports regarding consolidation efforts in Contract Area 4b or elsewhere in the Harbor. Therefore, it is highly recommended that you provide the Service with a draft scope-of-work for an IAG and reimbursable transfer funding soon.

Thank you for the opportunity to comment on the consolidation of deepenings in Contract Area 4b. If you have any questions, please contact Brian Marsh of my staff at (609) 646-9310, extension 21.

Sincerely,


Clifford G. Day
Supervisor

PERSONAL COMMUNICATIONS

Greene, K. 2002. Fisheries Biologist. Habitat Conservation Division, National Marine Fisheries Service, James. J. Howard Marine Sciences Laboratory, Highlands, New Jersey.

LITERATURE CITED

- Kerlinger, P. 1996. The New York City Audubon Society harbor ecosystem study: nesting population of aquatic birds of the New York Harbor, 1996. Prepared for the New York City Audubon Society. New York, New York. 12 pp.
- National Marine Fisheries Service. 1994. Results of a biological and hydrological characterization of Newark Bay, New Jersey: May 1993-April 1994. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Northeast Fisheries Science Center, Highlands, New Jersey. 168 pp.
- New Jersey Division of Fish, Game, and Wildlife. 1996. Unpublished midwinter waterfowl survey data. New Jersey Department of Environmental Protection, Trenton, New Jersey.
- U.S. Army Corps of Engineers. 1980. Navigation study on improvements to existing federal navigation channels: Kill Van Kull and Newark Bay Channels, New York and New Jersey. Technical appendices. Army Corps of Engineers, New York District, New York, New York.
- _____. 1999. Biological assessment for threatened and endangered species in the Port of NY/NJ. U.S. Department of the Army, Corps of Engineers, New York District, New York, New York. 36 pp.
- _____. 2000. New York and New Jersey Harbor navigation feasibility report. U.S. Department of the Army, Corps of Engineers, New York District, New York, New York. 136 pp. with appendices.
- U.S. Fish and Wildlife Service. 1996. Regionally significant habitat complexes of the New York Bight watershed. U.S. Department of the Interior, Fish and Wildlife Service, Southern New England / New York Bight Coastal Ecosystems Program. Charlestown, Rhode Island. 1025 pp.
- _____. 1997. Biological opinion on the effects of channel deepening activities within the Arthur Kill, Kill Van Kull, and Newark Bay channels, New York and New Jersey, on the peregrine falcon. U.S. Department of the Interior, Fish and Wildlife Service, New Jersey Field Office, Pleasantville, New Jersey. 34 pp. with appendices.
- _____. 1998. Assessment of the limited re-evaluation study: deepening of the Arthur Kill / Howland Hook Navigation Channel, New York and New Jersey. U.S. Department of the Interior, Fish and Wildlife Service, New Jersey Field Office, Pleasantville, New Jersey. 199 pp. with appendices.

- _____. 1999. Fish and Wildlife Coordination Act Section 2(b) Report on the New York and New Jersey Harbor navigation study. U.S. Department of the Interior, Fish and Wildlife Service, New Jersey Field Office, Pleasantville, New Jersey. 34 pp.
- _____. and U.S. Army Corps of Engineers. 2003a. Partnership agreement for water resources and fish and wildlife. 1 pp.
- _____. 2003b. Agreement between the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers for conducting Fish and Wildlife Coordination Act activities. 12 pp.



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

March 7, 2003

Environmental Assessment Section
Environmental Analysis Branch

Ms. Bernadette Castro
Deputy Commissioner for Historic Preservation
New York State Office of Parks, Recreation and
Historic Preservation
Agency Building 1
Empire State Plaza
Albany, New York 12210

Dear Ms. Castro:

The U.S. Army Corps of Engineers, New York District (Corps), is submitting an Amended Programmatic Agreement (PA) among the United States Army Corps of Engineers, the New Jersey State Historic Preservation Officer and the New York Historic Preservation Officer regarding the New York and New Jersey Harbor Navigation Project (Enclosure 1; HPO 99PR3466). The New Jersey Deputy State Historic Preservation Officer signed the document on the 5 February 2003.

The Amended PA expands the Area of Potential Effects (APE) to include not only those areas described in the signed PA but also areas being considered for environmental mitigation purposes. The Amended PA also reflects the more recent Congressional authority under which this project is authorized. The stipulations agreed to in the original PA will be executed for all areas with the APE as now defined.

Please review the agreement that has been pre-coordinated with your staff. If you concur with its stipulations, please sign and date the Amended PA and return it to the Corps. A copy of the signed document will be forwarded to your office.

Should you or your staff require additional information or have any questions, please contact Lynn Rakos, Project Archaeologist, at (212) 264-0229.

Sincerely,

Leonard Houston
Chief, Environmental Analysis Branch

Enclosure



NORTH ATLANTIC DIVISION, CORP OF ENGINEERS
FORT HAMILTON MILITARY COMMUNITY
GENERAL LEE AVENUE, BLDG 301
BROOKLYN, NY 11252-6700

Seabold
Shea

IN REPLY REFER TO
CENAD-CM-PP (1105-2-10C)

FEB 18 2003

MEMORANDUM FOR COMMANDER, HQUSACE, ATTN: CECW-P, 441 G Street, NW,
Washington, DC 20314-1000

SUBJECT: New York and New Jersey Harbor 50 ft. Deepening Project

1. Reference is made to the New York and New Jersey Harbor Estuary IPR meetings held at CENAN, which are regularly attended by Mr. Let Mon Lee of your staff.
2. At the IPR held on 23 Jan 2003, the topic of the approval process for an LRR needed for the 50 ft. subject project was discussed. It is our belief that the LRR will essentially verify the original feasibility report with updated cost and benefits for a limited number of combined elements of the 50 ft. project. We do not anticipate any reformulation of the 50 ft. project or significant changes in upland disposal costs. However, it is anticipated that there will be a substantial accounting for crediting of expended non-Federal costs against the non-Federal share of the project. The crediting could approximate 100 million dollars of the estimated 1.8 billion dollar project. While we recognize that there may be a need for further information, we are confident that an LRR providing an economic analysis will meet Federal interest and policy requirements and be acceptable to our partners and the public.
3. We propose to involve the vertical team to resolve any issues that may arise, as was the case when we finalized the final feasibility report, regardless of the approval level decided on. As the LRR can be approved at the MSC level, it would have to address certain credits to our partners, which may require review and approval by the ASA level. Therefore, I request that you provide guidance regarding whether this LRR could be approved at the MSC level.
4. Please contact Mr. Larry Cocchieri, Planning and Policy Division, North Atlantic Division, (718) 765-7071.

Samuel P Tosi
SAMUEL P. TOSI, P.E.
Chief, Planning and Policy Division
Directorate of Civil Works
and Management



REPLY TO
ATTENTION OF

NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

January 28, 2003

Environmental Assessment Section
Environmental Analysis Branch

Ms. Dorothy P. Guzzo
Deputy State Historic Preservation Officer
Historic Preservation Office
New Jersey Department of Environmental Protection
CN 404
Trenton, New Jersey 08625-0404

Dear Ms. Guzzo:

The U.S. Army Corps of Engineers, New York District (Corps), is submitting an Amended Programmatic Agreement (PA) among the United States Army Corps of Engineers, the New Jersey State Historic Preservation Officer and the New York State Historic Preservation Officer regarding the New York and New Jersey Harbor Navigation Project. The Amended PA expands the Area of Potential Effects (APE) to include not only those areas described in the signed PA but also areas being considered for environmental mitigation purposes. The Amended PA also reflects the more recent Congressional authority under which this project is authorized. The stipulations agreed to in the original PA will be executed for all areas with the APE as now defined.

Please review the agreement which has been pre-coordinated with your staff. If you concur with its stipulations, please sign and date the Amended PA and return it to the Corps to forward it to Ms. Bernadette Castro, New York State Deputy Commissioner for Historic Preservation, for her dated signature to ratify the agreement. A copy of the signed document will be provided for your files.

Should you or your staff require additional information or have any questions, please contact Lynn Rakos, Project Archaeologist, at (212) 264-0229.

Sincerely,

Leonard Houston
Chief, Environmental Analysis Branch

Enclosure



State of New Jersey

James E. McGreevey
Governor

Department of Environmental Protection
Division of Parks & Forestry, Historic Preservation Office
PO Box 404, Trenton, NJ 08625
TEL: (609) 292-2023 FAX: (609) 984-0578
www.state.nj.us/dep/hpo

Bradley M. Campbell
Commissioner

HPO-L2002-67
106/02-2018
December 10, 2002

Leonard Houston
Chief, Environmental Analysis Branch
Department of the Army
Corps of Engineers New York District
Jacob K. Javits Federal Building
New York, NY 10278-0090

ATTN: Lynn Rakos

Dear Mr. Houston:

Thank you for providing the draft report *Remote Sensing Survey in Connection with the New York and New Jersey Harbor Navigation Study, Upper and Lower Bay, Port of New York and New Jersey, Kings, Queens, New York and Richmond Counties, New York; Essex, Hudson, Monmouth and Union Counties, New Jersey* prepared by Panamerican Consultants, Inc. in March 2002. The Office looks forward to seeing the results of the diving as the result of identification of targets in connection with the subject survey, as well as the final project report emanating from the current survey.

Thank you again for providing this opportunity for review and Consultation. If you have any questions, please do not hesitate to contact Deborah Fimbel, staff reviewer for this project, at 609-984-6019.

Sincerely,

Dorothy P. Guzzo
Deputy State Historic
Preservation Officer

DPG:DRF



State of New Jersey

Department of Environmental Protection

James E. McGreevey
Governor

Bradley M. Campbell
Commissioner

Office of Air Quality Management
P.O. Box 418
Trenton, New Jersey 08625-0418
(609) 292-6710 phone
(609) 633-6198 fax

September 19, 2002

Frank Santomauro, P.E., Chief
Planning Division, Department of the Army
New York District, Corps of Engineers
Jacob K. Javits Federal Building
New York, New York 10278-0090

Dear Mr. Santomauro:

Following the August 13th meeting of the Regional Air Team (RAT), my staff updated me on the status of Air General Conformity for the Harbor Navigation 50-Foot Deepening Project (50 Foot Project). I was pleased to hear that the United States Army Corps of Engineers (Corps) is assessing the costs and benefits of consolidating a number of ongoing deepening projects with the 50 Foot Project. The Department recognizes the environmental and quality of life benefits that can result from this consolidation and supports such an effort.

While the consolidation will no doubt have many benefits, the years in which additional dredging will occur will result in increased air emissions. At the meeting no preliminary data on what the increased air emissions might be or the years in which they will likely occur was presented. However, based on the September 2001 air emissions report which was prepared for the 50 Foot Project, the majority of the increased emissions are likely to occur early and most likely in 2007 or before. This is, of course, of great concern to us since the attainment date for the New York-Northern New Jersey Nonattainment Area is 2007. When does the Corps expect this analysis to be completed?

Regarding the cost savings analysis that the Corps has prepared for the consolidation, I understand the increased costs that will need to be incurred to mitigate the increased emissions have not been included in this analysis. Those costs, which may be substantial, should be included in such an analysis.

I also understand that the Corps is looking to expedite the process to address General Conformity for the 50-Foot Project. The information brought to the Regional Air Team has certainly helped all parties to better understand the project in general, the air emissions associated with the project in particular, and some of the opportunities that exist for air emission reductions. However, it is the federal agency's responsibility, in this

THE PORT AUTHORITY OF NY & NJ

R.M. LARRABEE
DIRECTOR
PORT COMMERCE DEPARTMENT
225 PARK AVENUE SOUTH, 11TH FLOOR
NEW YORK, NY 10003
(212) 435-4218
(212) 435-4201 FAX
E-MAIL: rlarrabee@panynj.gov

August 29, 2002

Colonel John O'Dowd
District Engineer
Department of the Army
New York District, Corps of Engineers
Jacob K. Javits Federal Building
New York, NY 10278-0090

SUBJECT: MEMORANDUM OF AGREEMENT
KILL VAN KULL/NEWARK BAY AREA 5 DEEPENING TO 50 FEET

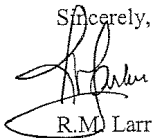
Dear Colonel O'Dowd:

The Port Authority is "piggybacking" on the Corps of Engineers' construction contract with Bean-Stuyvesant, LLC for the Kill Van Kull 45-foot channel deepening project to achieve 50 feet. Under a New York District permit, the Port Authority is authorized to excavate the Bergen Point area to 50 feet. I am pleased to inform you that the Port Authority has awarded a contract to Bean-Stuyvesant, LLC on August 26, 2002. For your information, a copy of the award letter for a contract price is \$107,604,120 is enclosed. We appreciate the opportunity to cooperate with you on the construction of this first phase of the Harbor Navigation Project and note that together we will improve the overall project schedule and maximize construction savings.

Management of our portion of the construction (from 45 to 50 feet) will be performed by the Corps of Engineers under a Memorandum of Agreement. The Port Authority has executed the Memorandum of Agreement and three copies of the executed document are attached.

We look forward to working with the Corps of Engineers on this contract.

Sincerely,



R.M. Larrabee
Director
Port Commerce Department

MEMORANDUM OF AGREEMENT
BETWEEN
THE PORT AUTHORITY OF NEW YORK & NEW JERSEY
AND THE
U.S. ARMY ENGINEER DISTRICT, NEW YORK

A. The following terms shall govern the responsibilities and obligations between The Port Authority of New York & New Jersey ("PANYNJ") and the U. S. Army Engineer District New York ("NYD") with respect to the construction of PANYNJ Contract MFP-234.921 entitled *Bergen Point, Newark Bay and Kill Van Kull Channels - Navigation Improvements*. This contract shall construct a 50-foot federal channel in portions of the Kill Van Kull and Newark Bay. The responsibilities and obligations described in this Memorandum of Agreement ("MOA") govern the parties hereto. When used in this agreement, the term "Contract" refers to Contract MFP-234.921 between the PANYNJ and its contractor, Bean-Stuyvesant, LLC. The term "contractor" refers to Bean-Stuyvesant, LLC.

B. The Chief Engineer of the PANYNJ shall be the Contracting Officer for the Contract and shall have responsibility for awarding and administering the Contract. The PANYNJ, through its own sources, shall provide all money for this project to include funding and all costs associated with the project and will not seek funding from the Government at this time, but will seek credit at a later date under the stipulations of the Harbor Navigation (50 Foot) Project Cooperation Agreement ("PCA"). The PANYNJ shall be responsible for claims from the contractor or others, including legal fees, changes, and supervision and administration ("S&A") costs for the NYD all arising from the performance of the Contract. Additionally, the PANYNJ agrees to have a representative attend a monthly In Progress Review ("IPR") meeting conducted by the NYD.

C. The NYD hereby undertakes and agrees to perform the following services related to the construction of the Contract for the compensation specified in paragraph E. The NYD will serve as the Contracting Officer's Designated Representative ("CODR") with the following responsibilities:

1. Provide project engineers, inspectors, and other necessary technical and administrative support to oversee the contractor's operations and to coordinate the construction with representatives of the PANYNJ.
2. Provide recommendations to the PANYNJ on all changes and claims arising from the Contract.
3. Provide construction S&A as follows:

a. Perform duties of the CODR for construction. Advise or consult with the PANYNJ in all matters relating to duties undertaken as needed or directed.

b. Utilize for the Contract, applicable contractor plans that are currently in place for the NYD contract DACW51-02-C-0001, that include, but are not limited to safety, contractor quality control, blasting, and environmental.

c. The CODR shall accept or reject shop drawings and other transmittals submitted by the contractor. The Chief Engineer of the PANYNJ shall be provided copies of all contractor submittals.

d. The CODR shall provide to the Chief Engineer of the Port Authority copies of the contractor's invoices as they are submitted for approval. The NYD shall review monthly contractor payment invoices and recommend amounts to be paid by the PANYNJ. If retainage is recommended, the NYD shall provide a written explanation for the amount recommended for retainage to the Contracting Officer along with a draft of a letter informing the contractor of the amount retained and the reason for the retainage. The NYD will also provide a recommendation on the final payment.

e. Make inspections, which shall be conducted and documented in Quality Assurance Reports.

f. Assure compliance by the contractor with the plans, drawings, specifications, standards of materials and craftsmanship, and other provisions of the contract documents.

g. Reject work that does not comply with contract requirements or specifications. Such rejections shall be by written notice. In cases where the contractor does not agree with the rejection, the NYD shall notify the Chief Engineer of the PANYNJ of the disagreement within five working days. The notification shall contain the reason for the rejection, the basis of the disagreement and a recommended solution for the decision by the Chief Engineer of the PANYNJ.

h. Perform Quality Assurance Testing and review of contractor's test results. Such reviews shall include but are not limited to tests performed by the contractor in accordance with the Contract and other tests performed on the project.

i. Analyze contractor's proposed changes for reasonableness of price and technical merit and submit recommendations to the Chief Engineer of the PANYNJ.

j. Prepare, compile or obtain from the contractor the following documents (or copies thereof) in accordance with the contract:

(1) List of all subcontractors, equipment suppliers and manufacturers (including addresses and telephone numbers) prepared by the contractor.

(2) Test results prepared by the contractor, performed by testing laboratories retained at the contractor's expense or the PANYNJ's testing laboratory.

- (3) Original as-built drawings prepared by the contractor.
- (4) Safety Plan, Fire Protection Plan.
- (5) Quality Control Plan.
- (6) Communications diagram.
- (7) Monthly updated progress schedule and hydrographic surveys.
- (8) Test Blast Plan.
- (9) Operational Blast Plan.
- (10) Pre- and post-dredge surveys with volume computations.
- (11) List of damage complaints arising from blasting operations.
- (12) Seismograph readings from each blast.

k. Receive and review contractor's payroll records for compliance with the labor provisions of the Contract, and advise the Chief Engineer of the PANYNJ of any non-compliance.

l. Inspect the completed work and upon completion of all construction conduct a final inspection of the work. The final inspection report will include the date when each area was accepted by the NYD.

4. The PANYNJ shall participate in a monthly IPR. Items covered at the IPR shall include: a review of the contractor's progress; a review of all outstanding changes; a review of the project budget; a review of any outstanding claims; and a discussion of any problem areas.

5. Upon close out of the Contract, copies of all construction management files shall be transferred to the PANYNJ.

D. The NYD shall perform the aforementioned services until the Contract is completed as evidenced by the issuance of the "Certificate of Final Completion" by the PANYNJ to the contractor as provided in the Contract. If any additional services are required of the NYD beyond that period, they shall be negotiated between the PANYNJ and NYD on an individual basis.

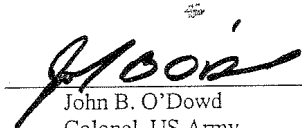
E. The PANYNJ agrees to pay the NYD for the above-described services. The PANYNJ shall pay the NYD a fee of 3.2% of the amount actually paid to Bean-Stuyvesant, LLC under the Contract, including extra work and claims of the contractor. The PANYNJ shall provide S&A funds to the NYD on a quarterly basis based on invoices submitted by the NYD and subject to the PANYNJ's right to audit such invoices.

F. It is agreed by the PANYNJ that the NYD and all NYD employees including assigned military officers, present or former, will be held harmless from any claims by the PANYNJ for any and all costs due to errors, omissions, mistakes, or other actions by the contractor. Recovery of any additional costs due to errors, omissions, mistakes, etc., by the contractor shall be pursued by the PANYNJ from the contractor only and not from the NYD or any NYD employee present or former, including assigned military officers.


G. The PANYNJ agrees to hold harmless the NYD, Corps of Engineers, and all their employees including assigned military officers, present or former, acting within the scope of their employment in connection with the project from any and all claims from any parties including the PANYNJ, contractors, or others.

H. Neither the Commissioners of the PANYNJ nor any officer, agent or employee thereof shall be charged personally by the NYD with any liability or held liable to it under any term or provision of this MOA, or because of its execution or attempted execution, or because of any breach thereof.

I. NYD hereby grants PANYNJ the right to use all drawings, specifications and any other design documents for the purpose of incorporation into the Contract. NYD shall at its own expense obtain all rights necessary from third parties to ensure that the PANYNJ has such rights free of all claims. NYD's compensation for such design documents is included in the Preconstruction Engineering and Design Agreement of the Harbor Navigation Project.


John B. O'Dowd
Colonel, US Army
District Engineer

13 August 2002
Date


R. M. Larrabee, Director
Port Commerce Department
The Port Authority of New York & New Jersey

30 August 2002
Date

THE PORT AUTHORITY OF NY & NJ

August 26, 2002

ENGINEERING DEPARTMENT
GATEWAY 2
100 WALLBERY STREET
NEWARK, NJ 07102

VIA FACSIMILE AND UPS NEXT DAY AIR

Bean Stuyvesant, L.L.C.
1055 St. Charles Ave., Suite 520
New Orleans, LA 70130

SUBJECT: KILL VAN KULL, NEWARK BAY - AREA 5 - HARBOR NAVIGATION
IMPROVEMENT CHANNEL DEEPENING - CONTRACT # MFP-234.921
PURCHASE ORDER UMFP234921

Gentlemen:

The Port Authority of New York and New Jersey hereby accepts your proposal on the above Contract.

The Port Authority elects to require you to furnish a performance and payment bond in accordance with the terms of the Contract in the amount of One Hundred Eight Million Dollars (\$108,000,000.00). A copy of the required bond form is enclosed, which should be executed by you and your surety and returned to Phyllis Esnes of the Port Authority, at 1 Madison Avenue, 7th Floor, New York, New York 10010 along with a copy of the invoice from the bonding company and bond broker if applicable, for the premium for said bond.

Please note that under the Contract clause entitled "Performance and Payment Bond", you are required to return the executed bond within seven days.

Your attention is directed to the clause of the Contract entitled "Time for Completion and Damages for Delay" and to the fact that before you may commence performance of the work you must furnish whichever of the documents mentioned in that clause are applicable.

Subject to the provisions of the Form of Contract, including those of the clause entitled "Extra Work Orders", the Chief Engineer shall have the authority to order any item of Extra Work if the cost thereof to the Authority, together with the cost of all other Extra Work previously ordered, will not be in the aggregate in excess of \$100,000.

Forwarded herewith for your use and compliance are "General Instructions Relating to the Direction and Processing of Correspondence and of Those Other Items Specified to be Submitted to the Port Authority Under the Terms of the Contract".

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

In order to ensure that payments are processed properly, please include the above-referenced Purchase Order No. on all payment invoices and correspondence.

Very truly yours,

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

BY *John F. Spamer*
Chief Engineer

Date

8/26/02

Approved as to form F. F.

Jeffrey S. Green
General Counsel

BY *Nicholas L. Fomenko*
Attorney

Date

August 26, 2002

July 25, 2002

Mr. Joseph J. Seebode
Harbor Programs Manager
Department of the Army
New York District Corps of Engineers
Jacob K. Javits Federal Building
26 Federal Plaza
New York, NY 10278-0090

Subject: Harbor Navigation Project Air Mitigation

Dear Mr. Seebode:

I am requesting an official reply to a memo dated May 13, 2002 from Lingard Knutson of our staff to Jenine Gallo of the New York District Planning Division, outlining several issues that Corps needs to assess and resolve before the Project Cooperation Agreement (PCA) negotiations for the Harbor Navigation Project (HNP) can be completed.

As you know, Jenine and Lingard have been working with staff from the U.S. Environmental Protection Agency, New Jersey Department of Environmental Protection, New York State Department of Environmental Conservation, New York City Department of Environmental Protection and other groups under the auspices of the Regional Air Team to develop a strategy to meet the General Conformity requirements for the HNP. The team is exploring options to reduce emissions from the HNP, however, several of those options may require new agreements in the PCA or changes to Corps contracting.

I am requesting that the Corps of Engineers assess these issues, and provide the Port Authority with your proposed actions that the Corps will take to provide air mitigation strategies for the HNP.

1. Several of the mitigation measures discussed by the Regional Air Team (PuriNOx, low sulfur fuel, electric dredges) will require the New York District to specify use of the product or equipment in a contract solicitation. Will the Corps be able to require air mitigation remedies through the bid process?
2. It may be necessary to purchase air credits to partially mitigate the construction emissions from the HNP? Is the New York District able to purchase emissions credits?



Mr. Joseph J. Seebode

-2-

July 25, 2002

3. If it is decided to use electric clamshell dredges for portions of the HNP, is the New York District able to negotiate and to sign contracts with electricity providers?

If you have any questions, please call me at 212-435-4274.

Sincerely,

Thomas H. Wakeman
General Manager
Waterways Development Division

cc: cc: R.M. Larrabee, M. Ronis, H. Welsh



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

REPLY TO
ATTENTION OF
Environmental Analysis Branch

14 JUN 02

Mr. Rick Gimello
Director of Maritime Resources
New Jersey Department of Transportation
28 West State Street, P.O. Box 837
Trenton, New Jersey 08625-0837

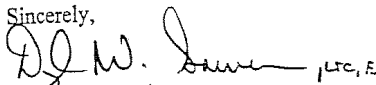
Dear Mr. Gimello:

At our last Senior Executive Review Group (SERG) held 19 March 2002, you and our other partners summarized your environmental restoration program and reaffirmed your support for restoration activities within the harbor. At the conclusion of that meeting, General Rhoades asked that each agency identify three top priority restoration projects, such that the District might work with them to see if they can be implemented quickly under our Continuing Authorities Program (CAP), while the larger Hudson-Raritan Estuary study proceeds toward a comprehensive plan for the harbor. Though our staffs have met to discuss potential projects, to date we have not received your list of priority sites on which you would be willing and able to partner with the Corps.

At the SERG, there was unanimous agreement of the necessity to demonstrate our joint commitment toward a dual goal of a vibrant port and a world-class estuary. Getting restoration projects on the ground expeditiously is a very positive step in this process, balancing the extensive investments made so far in Port improvements. Our CAP program provides a ready source of funds to achieve rapid success. We must, however, act quickly to reaffirm this region's commitment to its natural resources if we hope to continue to enjoy the support of all the stakeholders. Toward that end I urge you to provide me with your "wish list" of sites that we can work together. Of course, your continued support of the larger parallel harbor-wide HRE effort is also essential.

Should you have any questions on our CAP environmental authorities or particulars with respect to specific sites, please call Len Houston, Chief of our Environmental Analysis Branch, at 212-264-2122. Otherwise, I will be waiting to hear from you soon on those sites so that we can move forward together. Thank you.

Sincerely,


For John B. O'Dowd
Colonel, Corps of Engineers
District Engineer



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

REPLY TO
ATTENTION OF

Environmental Analysis Branch

14 Jun 02

Ms. Mary Ellen Kris, Regional Director
New York State Department of Environmental Conservation
47-40 21st Street
Long Island City, NY 11101

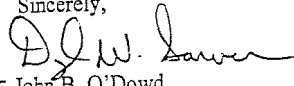
Dear Ms Kris:

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Sincerely,


For John B. O'Dowd, LTC, FEW
Colonel, Corps of Engineers
District Engineer



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

REPLY TO
ATTENTION OF

Environmental Analysis Branch

Mr. Chris Zeppie
Port Authority of New York & New Jersey
Office of Policy & Planning
Port Authority Technical Center
241 Erie Street, 3rd Floor, Room 313
Jersey City, New Jersey 07310

14 JUN 02

Dear Mr. Zeppie:

At our last Senior Executive Review Group (SERG) held 19 March 2002, you and our other partners summarized your environmental restoration program and reaffirmed your support for restoration activities within the harbor. At the conclusion of that meeting, General Rhoades asked that each agency identify three top priority restoration projects, such that the District might work with them to see if they can be implemented quickly under our Continuing Authorities Program (CAP), while the larger Hudson-Raritan Estuary study proceeds toward a comprehensive plan for the harbor. Though our staffs have met to discuss potential projects, to date we have not received your list of priority sites on which you would be willing and able to partner with the Corps.

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Sincerely,

John B. O'Dowd
For John B. O'Dowd
Colonel, Corps of Engineers
District Engineer



REPLY TO
ATTENTION OF

Harbor Programs Branch

NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

May 28, 2002

Mr. William J. Muszynski, P.E.
Deputy Regional Administrator
US Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

Dear Mr. Muszynski:

As stated in Colonel O'Dowd's December 21, 2002 letter to you regarding the NY & NJ Harbor Deepening Project Record of Decision, the District has completed its assessment of the North Jersey Transportation Planning Authority's report *2025 Regional Transportation Plan for Northern New Jersey* and the New York Metropolitan Transportation Councils' report *Freight Facilities and Systems Inventory on the New York Metropolitan Region*.

In summary, the District has concluded from this review that the assumptions made in the December 1999 Final Feasibility Report and Final Environmental Impact Statement for the NY & NJ Harbor Navigation Study concerning the future without-project conditions, remains valid.

We appreciate your staff arranging the meeting held on March 13, 2002 with the two Metropolitan Planning Organizations to discuss their data and findings. While EPA representatives concluded the meeting with a need to clarify certain items and potentially provide additional information and questions, no requests have been received. Accordingly, I am providing a copy of our analysis for your information.

If you have any questions concerning the report, please contact me at (212) 264-5481 or my Project Manager, Mr. Thomas Shea at (212) 264-5570.

STUART PIKEN, P.E.
Deputy District Engineer
For Programs and Project Management

Enclosure



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

Planning Division

9 April 2002

Mr. Robert Hargrove, Chief
Strategic Planning and Multi-Media Programs Branch
US Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007-1866

Dear Mr. Hargrove:

The US Army Corps of Engineers is in receipt of your letter dated February 28, 2000 in which you submit comments on the New York and New Jersey Harbor Navigation Study Final Environmental Impact Statement. Since that time, we have worked together to resolve many of your concerns. Therefore, we are addressing only those issues currently being evaluated or activities scheduled to be initiated, as described below:

Comprehensive Port Improvement Plan

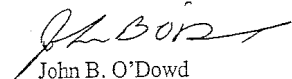
The Corps of Engineers and its non-Federal partners are committed to the preparation and finalization of a Comprehensive Port Improvement Plan (CPIP). The CPIP will address the USEPA's remaining concerns related to the potential for Port expansion and its environmental implications.

Air Quality

The District has performed the requested additional air quality evaluations to determine Compliance with the General Conformity Rule and has coordinated all analyses with USEPA. The project's Record of Decision will incorporate the signed Clean Air Act Conditional Statement of Conformity to confirm compliance with the New York and New Jersey State Implementation Plans in addition to committing to the completion of any required supplemental analyses before project's implementation.

Should you have any questions or comments, please call Ms. Jenine Gallo of my staff at (212) 264-9012. Thank you and your organization for your comments.

Sincerely,


John B. O'Dowd
Colonel, Corps of Engineers
District Engineer



State of New Jersey

Department of Environmental Protection

James E. McGreevey
Governor

Bradley M. Campbell
Commissioner

March 11, 2002

Colonel John B. O'Dowd, District Engineer
U. S. Army Corps of Engineers, New York District
Jacob K. Javits Federal Building
New York, New York 10278-0090

RE: Clean Air Act, Draft Conditional Statement of Conformity
New York and New Jersey Harbor Navigation Project

Dear Colonel O'Dowd:

This letter is forwarded in response to your February 21, 2002 request for concurrence on the Draft Conditional Statement of Conformity prepared by the New York District of the U.S. Army Corps of Engineers for the New York and New Jersey Harbor Navigation Project.

As you are aware, New York and Northern New Jersey are a severe non-attainment area for ozone and a non-attainment/maintenance area for carbon monoxide. Further, the estimated emissions associated with the construction of the New York and New Jersey Harbor Navigation Project exceed the de minimus levels for General Conformity established for the New York / Northern New Jersey Severe Non-attainment area.¹ These thresholds were established to ensure that federal projects would not cause or contribute to any new violation of any air standard in an area.² Consequently, under the federal Clean Air Act this project must demonstrate conformity with the State Implementation Plan. However, the Conditional Draft Statement of Conformity referenced above fails to quantitatively demonstrate conformity with New Jersey's approved State Implementation Plan. Rather, the Draft Conditional Statement of Conformity proposes a process, whereby conformity would be demonstrated incrementally in the future prior to the construction of any project element through supplemental conformity determinations.

A Conditional Statement of Conformity as proposed here does not follow the routine conventions of the Clean Air Act. However, in reviewing this document the Department has considered the scope and duration of the project. Completion of the construction of this project is not anticipated until the year 2016. Given anticipated technological advances over this horizon it may be impractical, if not impossible, to forecast preferred methods to reduce air emissions during the later years of this project. Further, it is unclear what effect project consolidation with the ongoing Phase II (45-foot) Kill van Kull Deepening Project may have on the annual emissions generated. As a result of these uncertainties, a committed yet flexible approach may be the better solution here. Therefore, the Department could concur with the

¹ 40 CFR §51.853

² Clean Air Act §176(c)

Draft Conditional Statement of Conformity only if it is modified to include a process that achieves incremental conformity as this project is built.

Since the New York and Northern New Jersey non-attainment area and downwind areas experience exceedances of the health based ambient air quality standard, a zero net increase in emissions must be the primary goal for this project. To achieve this goal the Draft Conditional Statement of Conformity must focus on a strategy that incorporates a hierarchy among the identified options. For the Department that hierarchy would seek: first, real emission reductions from dredging equipment and attendant equipment; second, real emission reductions from port facility and related equipment; and third, after these options are exhausted, the purchase of emissions credits to offset those emissions that cannot be reduced or compensated by actual reductions should be considered. Only when all of these options have been thoroughly exhausted would New Jersey consider other measures to achieve conformity.

In addition to lacking a preference among the identified options the conformity strategy also lacks accountability. The Department suggests that milestones and a schedule must be established and agreed upon in an expedited manner: generally within two to four months of today. The Department recommends that a committee be established including representatives of the U.S. Army Corps of Engineers, the Port Authority of New York and New Jersey, the two states, and the U.S. Environmental Protection Agency. This committee should be tasked with reaching a consensus on a schedule and milestones.

If the strategy in the Draft Conditional Statement of Conformity were revised as outlined above the New Jersey Department of Environmental Protection would concur with an incremental conformity process for this project.

Sincerely,



Bradley M. Campbell
Commissioner

C: John C. Elston Administrator, Office of Air Quality Management
Lawrence Schmidt, Administrator, Coastal Planning and Program Coordination
Chris N. Salmi, Manager, Bureau of Air Quality Planning
Lawrence J. Baier, Chief, Office of Dredging and Sediment Technology
Richard Gimello, Executive Director, Office of New Jersey Maritime Resources



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

REPLY TO
ATTENTION OF
Planning Division

21 February 2002

Acting Commissioner Bradley M. Campbell
New Jersey Department of Environmental Protection
401 East State Street
Trenton, New Jersey 08625-0402

Dear Mr. Campbell:

I am pleased to enclose a copy of the draft Conditional Statement of Conformity (dSOC) for the New York and New Jersey Harbor Navigation Project for your review (attachment). This document, once finalized, is the last remaining item needed before signing the project's Record of Decision.

This dSOC is the result of intensive coordination between our staffs, as well as the USEPPA Region 2 and the New York State Department of Environmental Conservation. It is our understanding that the NJDEP would concur with the dSOC, if we were to commit to emission reductions as a first option for seeking and providing offsets from the construction of the project, as well as incorporate some additional compliance measures outlined in the dSOC. We believe that we have complied with the goals of the non-attainment area States to seek real emission reductions, as well as the intent of the General Conformity Rule regulation, [40 CFR Subpart W Section 51.858(a)(5)(i)(A)].

The dSOC has been submitted for public review per a Public Notice placed in local area newspapers as mandated by 40 CFR, Subpart B, Section 93.156 of the Clean Air Act, General Conformity Rule requirements for public notification. This occurred on February 18, 2002 at which time a 30-day review period began.

The New York District is on an aggressive schedule to sign the project Record of Decision in order to initiate the technical evaluations as outlined in the dSOC and to ensure the project is in compliance with the appropriate air quality statutes prior to scheduled construction. We ask for your concurrence on the conditional dSOC.

We look forward to a continued cooperative effort between our two organizations in addressing this conformity issue. If you have any questions regarding these issues, please do not hesitate to contact myself at (212) 264-0100 or Mr. Frank Santomauro, P.E., Chief of Planning, at 212-264-0223.

Sincerely,

John B. O'Dowd
Colonel, U.S. Army
District Engineer

Enclosure

Copies Furnished:
Commissioner, NYSDEC
US EPA Director, Region 2



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

REPLY TO
ATTENTION OF
Planning Division

21 February 2002

Commissioner Erin M. Crotty
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-1011

Dear Ms. Crotty:

I am pleased to enclose a copy of the draft Conditional Statement of Conformity (dSOC) for the New York and New Jersey Harbor Navigation Project for your review (enclosed). This document, once finalized, is the last remaining item needed before signing the project's Record of Decision.

This dSOC is the result of intensive coordination between our staffs, as well as the USEPA Region 2 and the New Jersey Department of Environmental Protection. It is our understanding that the NYSDEC would concur with the dSOC, if we were to commit to emission reductions as a first option for seeking and providing offsets from the construction of the project, as well as incorporate some additional compliance measures outlined in the dSOC. We believe that we have complied with the goals of the non-attainment area States to seek real emission reductions, as well as the intent of the General Conformity Rule regulation, [40 CFR Subpart W Section 51.858(a)(5)(i)(A)].

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Sincerely,

John B. O'Dowd
Colonel, U.S. Army
District Engineer

Enclosure

Copies Furnished:
Commissioner, NJDEP
US EPA Director, Region 2



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

REPLY TO
ATTENTION OF
Planning Division

21 February 2002

Regional Administrator Jane Kenny
U.S. Environmental Protection Agency Region 2
290 Broadway, 26th Floor
New York, NY 10007-1866

Dear Ms. Kenny:

I am pleased to enclose a copy of the draft Conditional Statement of Conformity (dSOC) for the New York and New Jersey Harbor Navigation Project for your review (attachment). This document, once finalized, is the last remaining item needed before signing the project's Record of Decision.


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Sincerely,


John B. O'Dowd
Colonel, U.S. Army
District Engineer

Enclosure

Copies Furnished:
Commissioner, NJDEP
Commissioner, NYSDEC



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1868

Joe Seabold Jr

Shea

DEC 26 2001

John B. O'Dowd
Colonel, Corps of Engineers
District Engineer
U.S. Army Corps of Engineers
26 Federal Plaza, N.Y. 10007

Dear Colonel O'Dowd:

This is in regards to your December 21, 2001 letter in which you outline a series of actions that the U.S. Army Corps of Engineers (USACE) will implement in regards to the NY/NJ Harbor Deepening Study (the 50' Project) and the pending permit action by the Port Authority of New York and New Jersey (PANY/NJ) to deepen the Bergen Point Reach (Contract Area 5) of the Kill van Kull to 50-feet. I am pleased to see that you are taking actions to try to resolve some of the issues raised by the Environmental Protection Agency regarding the 50' project and Contract Area 5.

With respects to the proposal to publish the Public Notice for Contract Area 5, I agree with the steps you have laid out in you letter. In addition, my staff will be available to work with you and the PANY/NJ regarding the conformity analysis needed for this effort.

I understand that you are currently analyzing the feasibility and potential environmental impacts of further consolidation/acceleration of the 50' project with the on-going 45' projects. I am also pleased that you will be reviewing planning studies such as those issued by the New York Metropolitan Transportation Commission and the North Jersey Transportation Planning Authority regarding the impact of port freight volumes on the existing transportation network. It would be prudent, considering the mandates of 40CFR1502.9(c)(1), if both of these efforts by the USACE are completed and taken into account prior to issuing the Record of Decision (ROD). EPA will be willing to facilitate a meeting between the USACE, the PANY/NJ and the two Metropolitan Planning Organizations to assist your reviews. In regards to the conformity determination needed for the ROD, I believe our respective staffs have come to an agreement on how to resolve this issue in a timely manner.


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In addition, I concur with your statement that the Comprehensive Port Improvement Plan is the vehicle to address the need for and impacts associated with port improvement and transportation infrastructure needed to account for a potential increase of the port's cargo handling capacity beyond 9.6 million TEUs.

Should you wish to discuss this matter further, please contact me at 212-637-5000 or Ron Borsellino, Deputy Director of the Division of Environmental Planning and Protection at 212-637-3735.

Sincerely yours,


William J. Muszynski, P.E.
Deputy Regional Administrator

cc: General Rhodes
U.S. Army Corps of Engineers

Tom Waters
U.S. Army Corps of Engineers

Rick Larabee
Port Authority of NY & NJ



OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 19, 2000

The Honorable Joseph W. Westphal
Assistant Secretary of the Army
for Civil Works
Pentagon - Room 2E570
Washington, D.C. 20310-0108

Dear Dr. Westphal:

As required by Executive Order 12322, we have completed our review of your recommendation for the report on the authorization of a deep-draft navigation project for the New York and New Jersey Harbor enclosed with your letter of July 5, 2000.

We note that the Corps of Engineers' economic analysis supporting this authorization assumes in the "without project condition" that a container facility at the former Military Ocean Terminal at Bayonne (MOTBY) is operational prior to initiating the proposed 50-foot deepening of the Port Jersey Channel and that the South Brooklyn Marine Terminal and related transportation infrastructure are in place when the Bay Ridge Channel construction is complete. To ensure that the expected benefits of this project are realized, we believe it is important to modify the items of local cooperation recommended in the Report of the Chief of Engineers by adding one element and changing another element. Specifically, the local sponsor should agree that: 1) the container facilities at the former MOTBY site at Port Jersey will be operational prior to the construction of the 50-foot Port Jersey Channel; and 2) the South Brooklyn Marine Terminal and related infrastructure will be under construction and scheduled to be completed concurrently with the Bay Ridge Channel.

With the inclusion of the above-mentioned changes, your recommendation for this project is consistent with the policies and program of the President. The Office of Management and Budget does not object to your submitting this report to Congress.

Sincerely,

Richard A. Mertens
Acting Deputy Associate Director
Energy and Science